EARLY RETIREMENT FOR CERTAIN FEDERAL INSPECTORS AND REVENUE OFFICERS

HEARING

BEFORE THE

SUBCOMMITTEE ON
COMPENSATION AND EMPLOYEE BENEFITS

OF THE

COMMITTEE ON
POST OFFICE AND CIVIL SERVICE
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

H.R. 2532

TO AMEND TITLE 5, UNITED STATES CODE, TO INCLUDE INSPECTORS OF THE IMMIGRATION AND NATURALIZATION SERVICE, INSPECTORS OF THE UNITED STATES CUSTOMS SERVICE, AND REVENUE OFFICERS OF THE INTERNAL REVENUE SERVICE WITHIN THE IMMEDIATE RETIREMENT PROVISIONS APPLICABLE TO CERTAIN EMPLOYEES ENGAGED IN HAZARDOUS OCCUPATIONS

JULY 13, 1988

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CONTENTS

	Page
Statement of:	
Hon. Mary Rose Oakar, a Representative in Congress from the State of Ohio	2
Hon. Al Swift, a Representative in Congress from the State of Washington	2
Jerome D. Julius, Deputy Associate Director for Retirement and Insurance, Office of Personnel Management	5
Charles J. Murphy, president, National Immigration and Naturalization Service Council, American Federation of Government Employees	18
Patrick F. Smith, director of legislation, National Treasury Employees Union, accompanied by Kevin Fox, president, NTEU Chapter 153, and Jan Smola, president, NTEU Chapter 33	28
Kevin Fox	49
Jan Smola	49
Sebastian Russo, national president, Federation of Postal Police Officers, accompanied by William Brock, national vice president	53
William Brock	62
Neal Marchbanks, chairman, Legislative Committee, National Weather Service Employees Organization	64
Statement submitted by:	
Federal Managers Association	82
Alan C. Nelson, Commissioner, Immigration and Naturalization Service	87
Communication from:	
U.S. Postal Service, Fred Eggleston, Assistant General Counsel, Legislative Division	79
Office of Personnel Management, Jerome D. Julius, Deputy Associate Director for Retirement and Insurance	12
John Chwat, Chwat/Weigend Associates, on behalf of the National Weather Service Employees Organization	95

EARLY RETIREMENT FOR CERTAIN FEDERAL INSPECTORS AND REVENUE OFFICERS

WEDNESDAY, JULY 13, 1988

HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON COMPENSATION AND EMPLOYEE BENEFITS,
Washington, DC.

The subcommittee met, pursuant to call, at 12:07 p.m., in room 311, Cannon House Office Building, Hon. Gary L. Ackerman presiding.

Mr. ACKERMAN. The subcommittee will come to order.

Today the Subcommittee on Compensation and Employee Benefits will consider H.R. 2532, a bill proposed by Congressman Al Swift of Washington. The bill would extend early retirement rights to revenue officers of the Internal Revenue Service, inspectors of the Immigration and Naturalization Service, and inspectors of the United States Customs Service. This right, which is presently granted to law enforcement officers and firefighters, permits them to receive an immediate annuity at age 50 with 20 years of service.

The individuals covered by this bill are among the most courageous public servants anywhere. On a daily basis, they risk their lives in order to enforce Federal laws against tax evasion, drug trafficking, and violations of our immigration laws. These are positions of high stress and great danger, and those hazards are increasing. As we will hear in testimony today, a great many of these Federal employees have given their lives in the service of their country.

I commend Congressman Swift for his efforts, which go back several years, to have the Office of Personnel Management reclassify these individuals as "law enforcement officers". Although, as individual agencies, the IRS and the Customs Service strongly support that effort, the administration has refused to comply and legislative change, therefore, seems to be the only remedy.

Today we also want to consider proposals to extend early retirement rights to other Federal positions involving law enforcement responsibilities or duties which are particularly stressful. These include postal police officers as well as National Weather Service employees at air traffic control centers.

I have a statement here from Congresswoman Mary Rose Oakar which, without objection, will be entered in the record at this point as though read in full.

STATEMENT OF HON. MARY ROSE OAKAR

Ms. OAKAR. Mr. Chairman, it is indeed an honor for me to join you today for this important hearing. Your leadership in this area is much appreciated by your colleagues and those whose interest we represent. I would like to also commend my colleague Al Swift for taking up this cause for so many concerned Federal employees.

Mr. Chairman, the purpose of the subcommittee's hearing this afternoon is to receive testimony on H.R. 2532, which Congressman Al Swift of the State of Washington has introduced.

As you know, under current law, an employee voluntarily retires at age 50 or over and after completing at least 20 years of service as a law enforcement officer or firefighter.

Retirement for such employees is mandatory at age 55 with at least 20 years of law enforcement or firefighter service. However, agency heads are authorized to exclude employees from mandatory retirement until age 60.

Under current law, law enforcement officers are defined as those employees whose responsibilities are investigation, apprehension, or detection of individuals suspected or convicted of crimes against the United States.

Firefighters are those employees whose duties are primarily directly connected with the control and extinguishment of fire or the maintenance and use of firefighting equipment.

I am sure that there is common agreement among all of us here, that these employees perform a law enforcement function. Customs Inspectors each year make some 3,000 arrests, all of which are felonies.

Last year, Immigration and Naturalization inspectors had the lead responsibility for screening millions of individuals entering the country.

In 1983, these employees apprehended 533,063 illegal aliens at U.S. Ports of entry.

The bill before us today is of great concern to so many Federal employers who place their lives on the line each working day. This legislation is long overdue and I hope we can find some accommodation with the administration so we may move this important bill before we adjourn for election day recess.

Mr. ACKERMAN. It is my pleasure to now welcome our first witness and sponsor of this very important piece of proposed legislation, Congressman Al Swift.

STATEMENT OF HON. AL SWIFT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. SWIFT. Thank you, Chairman Ackerman. I very much appreciate your willingness to hold this hearing. It is an issue we have been pursuing for some time. It is a difficult issue to deal with legislatively because, as we deal with issues of war and peace, economic problems, plant closings and trade, bills that are important to many individuals but are not large in the broad scheme of things, sometimes get put on the back burner. A former Senator from our State once said so many things that are so good for the American people take so long to accomplish, and I think this is one of those. So I very much appreciate your patience and willingness to hear.

I have long been concerned with the Office of Personnel Management's interpretation of the early retirement provision, 6(c), in regard to Customs and Immigration inspectors. H.R. 2532 is the third bill I have introduced correcting this provision of Federal law. This bill is different from the two previous bills in that I have included revenue officers of the Internal Revenue Service because, frankly, they fit the same rationale that exists for the Customs and Immigration employees. Testimony presented before your subcommittee today will show the need for early retirement benefits for each of these three groups of hard-working Federal employees.

Recently, I have been contacted by other Federal employees who feel that they are working in what by all rights should be considered a law enforcement position. I have not been able to study their case in detail, but would hope that this subcommittee would at some point in the future take it upon itself to look into other positions in the Civil Service that may have legitimate reason to be included in the 6(c)b provisions.

I believe that the facts speak for themselves in this matter. In fiscal year 1986, Customs inspectors made almost 85 percent of all Customs Service arrests, including over three-quarters of heroin arrests, over three-quarters of the marijuana arrests, and nearly three-quarters of the currency arrests, for a total of 22,212 arrests. This was an increase of over 25 percent over Fiscal Year 1985, and 2,500 were felony arrests based on information from the FBI's National Crime Information Center. That's for the Customs inspectors.

For Immigration inspectors, they denied entry to almost 23,000 individuals in Fiscal Year 1986. Many aliens used fraudulent or counterfeit documents in their attempt to enter our country. As you can imagine, this is an increasingly volatile situation, and violence and arrest resistance are a constant threat to inspectors.

As for the revenue officers, they have always faced hostile delinquent taxpayers from time to time in the conduct of their work, but the danger of their job has increased dramatically in the past few years. The IRS job description for Revenue Officers includes, in part, "the revenue officer is subject to potential physical danger each time an initial field call is made."

Customs Commissioner Van Raab has repeatedly stated his support for this type of legislation as it relates to Customs inspectors. The Immigration and Naturalization Service has recently been successful in reclassifying certain inspector positions to allow them to be included in early retirement provisions. They are currently working to include all INS inspectors in these provisions.

In 1985, an IRS study showed that early retirement for revenue officers was projected to cost upwards of $350,000 annually, but save over $2 million annually in training costs and increase total revenue collection by as much as almost $100 million annually. I understand that a more recent study by the IRS confirms that earlier study.

I have asked the Congressional Budget Office to undertake a cost analysis of this bill, and this study should be available in the near future. I will share the results with you and the other members of the committee when that is available.

Chairman Ackerman, this is fundamentally the problem as I see it. We originally define the jobs. Technology and other factors, policy changes and so forth, have changed the jobs but we have never gone back and updated those and give them the same treatment that we give others who, in fact, face the same kind of danger.

It was not very long ago that a Customs or Immigration officer standing at the border had relatively small law enforcement authority and requirements. But since the advent of computerization at each border station, that Customs or Immigration agent, whoever is standing there just dealing with the automobiles passing through, punches in the license plate of every car that approaches him, and the computer will tell him whether he is to stop and detain that individual.

Now, it's interesting that the Border Patrol people—and this is no criticism—they have this kind of additional recognition contained in this law. But in this instance, it is the Customs or Immigration officer who must subdue and detain whoever it is in that car. What the Border Patrol officer, who has these special considerations, does is come and take away a person who has already been subdued, on the face of it, a less dangerous kind of job than the initial one. Customs and Immigration people didn't used to have to do that. They now have to do that. We have not let the benefits catch up with the change in the job description. I think a similar analogy is also true of the IRS agents in the bill.

I think the American public is entitled to a young and vigorous work force to protect the integrity of our borders and to ensure the vigilant and energetic enforcement of the Nation's laws. Including Customs inspectors, Immigration inspectors, and revenue officers under the early retirement provisions of the Civil Service Retirement Act will allow this needed recruitment of young and able Federal employees.

I would hope that you would join the bipartisan and diverse group of 87 sponsors in supporting this bill, and seeing that the House passes this legislation in this Congress.

I would be happy to answer any questions that you might have.

Mr. ACKERMAN. Al, let me commend you for your very fine statement, as well as for your tireless efforts on behalf of this very important component of our Federal work force. The statistics that you present to us are very impressive and also very distressing at the same time.

I have been approached by some other groups who want to be included in your bill—not surprisingly—and I intend to ask OPM for its comments about that. But I also want to ask you if you have any opinion about broadening the bill to include additional groups, specifically the Federal Protective Service that has asked to be included.

Mr. SWIFT. I have no objection to including any Federal employee group that meets the criteria. What I think the criteria here are: does their job, in fact, provide them with the kind of stress and endangerment that these special considerations that are already given to some Federal employees were designed for. If they meet those, I think, in all fairness and equity, they should be included. If they don't, then I think this committee can take a look and see

whether they have some other kind of responsibility that should be responded to in some fashion.

So I would place that rule of thumb. I think there is no doubt that there are Federal employee groups beyond Customs, Immigration and the IRS employees that would fit it. I have not sat down and talked with those groups in detail, so I can't respond to any specific one. But if they meet the criteria, I would think they should be included in this kind of legislation.

Mr. ACKERMAN. I understand that your interest in this particular legislation stems from a very tragic incident of a constituent within your district; is that accurate?

Mr. SWIFT. I represent a border area between Washington State and British Columbia, and there are several border stations in my district, about four. In one of them, an officer was shot to death. It really raised the concern and awareness, the focus, if you will, of all of the employees in that immediate area. A border station has, incidentally, just this past winter, been dedicated in his name there in the area.

But it demonstrates very clearly that this job is dangerous. He is not the first and he has not been the last of our border officers, Customs and Immigration, who have been killed in the normal course of carrying out their responsibilities. I think that everybody knows that their jobs are hazardous. It is simply that OPM has, for whatever reasons, resisted trying to see that these people are treated with the equity that other employees are.

I would add that it was true under the last two years of the Carter administration when we started this fight, as well as it is under this administration. You sometimes wonder whether OPM is simply trying to keep the costs of Federal employees down, regardless of what the merits may be for the case—that is my conclusion—or do they think it is baseless what we suggest, that these people, in fact, are just in strange and bizarre accidents, being hurt and killed, or rather, is it happening as a natural outgrowth of the kinds of duties that have been assigned to them by the Federal Government. I believe it to be the latter, and I think it is unconscionable to suggest that if you assign persons to that kind of duty, you will not give them the same benefits that you give others who have been assigned to those kinds of life-hazarding duties.

Mr. ACKERMAN. Congressman Swift, thank you very, very much for your sponsorship of this bill and your very eloquent presentation.

Mr. SWIFT. Chairman Ackerman, thank you so much for having this hearing today.

Mr. ACKERMAN. Our next witness is Mr. Jerome D. Julius, the Deputy Associate Director for Retirement and Insurance, Office of Personnel Management. Welcome, Mr. Julius. It's a pleasure to have you here with us this morning. Make yourself comfortable. You may begin at your pleasure.

STATEMENT OF JEROME D. JULIUS, DEPUTY ASSOCIATE DIRECTOR FOR RETIREMENT AND INSURANCE, OFFICE OF PERSONNEL MANAGEMENT

Mr. JULIUS. Thank you, Mr. Chairman.

I am the Deputy Associate Director for Retirement and Insurance with the Office of Personnel Management. I appreciate this opportunity to discuss H.R. 2532. The bill would extend to Customs and Immigration inspectors, and to IRS revenue officers, the same generous benefits currently available to law enforcement officers and firefighters under the Civil Service Retirement System. The bill would not affect the benefits of employees subject to the new Federal Employees Retirement System.

Under this special program, individuals who meet the statutory definitions of "law enforcement officer" and "firefighter" may retire earlier than most Federal employees and have their annuities computed under a more generous formula. These benefits are designed to make early retirement economically feasible for individuals in occupations where it is necessary to have a young and vigorous work force. Law enforcement officers and firefighters are also subject to mandatory retirement at age 55 if they have 20 years of law enforcement or firefighter service.

In order to help finance the additional cost of their benefits, these employees must contribute 7.5 percent of basic pay to the retirement fund, compared to the 7 percent of pay most employees contribute. These contributions, however, finance only a very small portion of the cost of the special retirement benefits.

While H.R. 2532 would extend law enforcement benefits to Immigration and Customs inspectors and to IRS agents, the bill would not subject these employees to the mandatory retirement or 7.5 percent contribution requirements that apply to Federal law enforcement officers. Thus, the bill would grant the inspectors and revenue agents even more privileged treatment than is available to law enforcement officers. We believe these elements of H.R. 2532 are particularly unreasonable.

The heart of OPM's opposition to this bill, however, lies in our belief that it is a dangerous departure from reliance on the definition of "law enforcement officer" in the Civil Service Retirement law as the basis for all decisions about which occupations will be covered by the special retirement program we are discussing here. Immigration and Customs inspectors and IRS revenue officers clearly do not, as a general matter, meet the statutory definition of "law enforcement officer". Although they are, at times, involved with violators of Federal laws and are exposed to danger, their primary duties are not the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States. Individual Immigration and Customs inspectors and IRS revenue officers whose actual duties do meet this definition are, of course, granted coverage under the special retirement program.

If special benefits for law enforcement officers are granted to the individuals covered by H.R. 2532, these benefits will inevitably be extended to other groups of employees who also are not law enforcement officers but whose duties involve exposure to hazard. Once we embark on this path, it will be impossible to determine or to measure the degree of hazard to which an employee must be exposed in order to qualify for special early retirement benefits.

Civil Service Retirement benefits for law enforcement officers and firefighters are extremely expensive. Extending these benefits

to every employee who could claim that exposure to hazard is an element of his or her job would very significantly increase the already high cost of these benefits. The cost of extending these benefits under H.R. 2532 would amount to $55 million for each of the next 30 years. We do not believe the cost of opening the special early retirement program in this way is justifiable. Therefore, we firmly oppose H.R. 2532.

Mr. Chairman, that ends my statement. I am ready for your questions.

Mr. ACKERMAN. Thank you very much, Mr. Julius.

I believe it was four years ago that an OPM spokesman testified that OPM was "currently reviewing the entire range of issues relating to early retirement to see what amendments, if any, might be appropriate." What I would like to know is, since that time, has OPM made any changes in the categories of positions eligible for early retirement?

Mr. JULIUS. Mr. Chairman, since that time, OPM participated in discussions on designing a new Federal employee retirement system. There are some changes in that system for law enforcement officers and firefighters, but basically the concepts are essentially the same.

Mr. ACKERMAN. We know that Congress sets the definition of what a law enforcement officer is, but there is still enough room for subjective interpretations by OPM. For example, OPM regulations state that law enforcement officer does not include "an employee whose primary duties involve maintaining law and order, protecting life and property, or guarding against violations of law."

It seems to me that you're excluding a large number of law enforcement officers. Maybe you could tell us what the rationale is for that regulation, and maybe you could tell us what you would call people who perform those functions.

Mr. JULIUS. Mr. Chairman, I'm sorry. I didn't hear the last part, after "rationale".

Mr. ACKERMAN. I said that it appears that you're excluding a large number of law enforcement officers. I would like to know if you could share with me the rationale for that, and if you don't call them law enforcement officers, what would you call the people who perform those duties?

Mr. JULIUS. First of all, Mr. Chairman, maybe I could take the comments backward.

The provisions are: "law enforcement officer for the purposes of retirement." I think that's important. If people want to call policemen—and others who we have excluded—law enforcement officers, we don't quibble with that. What we quibble with is whether or not their duties meet the definition for "law enforcement officers" for retirement purposes. So I guess my problem is that, if you want to call them "law enforcement officers," that's fine. The issue is, do they meet the definition of law enforcement for retirement purposes.

Mr. ACKERMAN. I find that confusing. I would think that we're defining people's title by their function for specific purposes. What you're doing, it seems to me, is playing semantics by saying "for retirement purposes". If the function of what they're doing meets

the criteria we have established for the direction of public policy that we seem to be indicating, then should they not be qualified?

Mr. JULIUS. I didn't mean to indicate it was a semantics problem. The model and rationale for having provisions for law enforcement retirement in the statute in the first place goes back to 1947. In 1947, only the FBI was granted a special retirement provision for law enforcement.

Mr. ACKERMAN. Why was that?

Mr. JULIUS. Because of their investigation duties, sir. That is the concept that we have used——

Mr. ACKERMAN. Because of research?

Mr. JULIUS. The FBI, no, sir. Investigation of the violation of criminal laws.

Mr. ACKERMAN. When you say investigation, I presume that the real meaning of that is because they're exposed to a dangerous element. You know, people in the Library of Congress do a lot of investigation, also.

Mr. JULIUS. There certainly was some danger involved. It was basically because they thought the FBI should have a young and vigorous work force to do this job of investigating criminals. We have used that model ever since as the basis for all of our rationale.

Mr. ACKERMAN. Because of the need for a young and vigorous work force?

Mr. JULIUS. Yes, sir.

Mr. ACKERMAN. Why would you need a young and vigorous work force?

Mr. JULIUS. Because of the arduous duties involved in investigating criminals.

Mr. ACKERMAN. Because it was arduous?

Mr. JULIUS. Yes, sir.

Mr. ACKERMAN. Would dangerous be a word also?

Mr. JULIUS. It could be, Mr. Chairman, but we had a hazard requirement in that statute for a number of years——

Mr. ACKERMAN. When you say arduous, I assume you don't mean just hard work. I would think most of our Federal work force is hard-working.

Is it because there are possibilities that you want younger and more vigorous people because they do things that might be fraught with danger?

Mr. JULIUS. That's certainly a possibility, yes, sir.

Mr. ACKERMAN. What criteria does OPM use in determining who is or who is not a law enforcement officer?

Mr. JULIUS. Basically, the criteria that we use is information sent to us by the agency, when the agency sends us a position and asks us to concur in their recommendation that that position be granted law enforcement coverage. The position description describes the duties to us, and what we look for in that position description is whether or not the duties of the position are primarily the investigation, apprehension, and detention of individuals suspected of or convicted of violating criminal laws of the United States.

Mr. ACKERMAN. Do you consider whether or not they carry a gun?

Mr. JULIUS. No, we do not, sir. It is quite possible to have this coverage and not carry a gun.

Mr. ACKERMAN. How about whether or not they have arrest powers?

Mr. JULIUS. It is quite possible to have this coverage and not have arrest powers.

Mr. ACKERMAN. Law enforcement status seems to depend on one's primary duties. What I would like to know is how OPM defines "primary".

Mr. JULIUS. Primary duties are paramount for the establishment of the position itself. Those are the primary duties.

Mr. ACKERMAN. If someone has to be ready at any minute to enforce the law, aren't they law enforcement officers 100 percent of the time?

Mr. JULIUS. Again, Mr. Chairman, I'm afraid I have a semantic problem here. I would agree with you, they may be law enforcement officers, but that still may not entitle them to the special retirement provision unless those duties are primary.

Mr. ACKERMAN. Well, if it's something you have to be prepared to do 100 percent of the time, that's pretty primary to me, unless you have something else that they should be ready to do 101 percent of the time.

Mr. JULIUS. And I don't know of any case where it is described to us in that way where we have not granted coverage.

Mr. ACKERMAN. Later today we anticipate hearing testimony in support of including postal police among those eligible for early retirement. Do you have any position on that proposal?

Mr. JULIUS. Yes, sir. If their primary duties are in those categories which you mentioned earlier, maintaining law and order, protecting property and that sort of thing, if those are their primary duties, we would not grant them coverage. In the past, that is how those two have been described to us.

Mr. ACKERMAN. I have also been approached by members of the Federal Protective Service and the U.S. Mint police, who have also sought the right for early retirement. Do you have a position on that?

Mr. JULIUS. The position is the same, sir.

Mr. ACKERMAN. What about the National Park Service Rangers?

Mr. JULIUS. I haven't ever seen any material from them, sir. If they describe their duties in that same way, we would not grant coverage.

Mr. ACKERMAN. So it depends on how they describe their duties?

Mr. JULIUS. They have to describe their duties to us, yes, sir. The information they send us tells us what their duties are, what is primary and what is not.

Mr. ACKERMAN. So if they would redescribe their duties to you in a different semantical form, it's quite possible you would have a change in policy?

Mr. JULIUS. If that is, in fact, their duties, and not just a change in semantics.

Mr. ACKERMAN. Who makes the decision as to what their duties are? Do you do that or do they do that?

Mr. JULIUS. The agencies do it. We from time to time audit their description.

Mr. ACKERMAN. How do you audit a description?

Mr. JULIUS. By actually going out and investigating and seeing what their duties are.

Mr. ACKERMAN. You stated in your testimony that OPM defers to the agencies. We have a letter—I don't know that you've seen it—a memorandum to Secretary Baker from Lawrence Gibbs, the Commissioner of the Internal Revenue Service, expressing his support for this legislation. This would be particularly for revenue officers. Would you defer to that position by the agency?

Mr. JULIUS. I haven't seen the letter, sir.

Mr. ACKERMAN. I would be glad to furnish you with a copy of it, if you want to see it now. Basically, it makes a specific request that they be included in this legislation. We'll get you a copy of the letter, rather than putting you in the unfair position of having to respond to it now without having seen it.

Mr. JULIUS. I would be glad to respond to it.

Mr. ACKERMAN. We will keep the record open so that you might be able to participate in the consultative process before responding to that.

Later today we're going to hear testimony that many of the individuals covered by this bill, particularly revenue officers, never reach the normal retirement age of 30 years. The stress of their job and even physical injuries often force them to leave early, sometimes on disability retirement. Isn't that an argument that these positions should be filled by young and vigorous individuals?

Mr. JULIUS. I would have to look at it and see it, but it sounds like we would like to have all the positions filled by young and vigorous people. The other thing that goes along with that is, is it a position that has to be limited to this group of people so that we have to later mandatorily retire them. Is there something about the position that greatly and significantly diminishes their ability to do their job as they get older?

Mr. ACKERMAN. We would be glad to furnish you with copies of the testimony that we have had presented to us, that we will anticipate hearing later here today, that does point out that that, indeed, is the fact. I think if you would read that testimony and audit, if you will, you might come to that same conclusion.

Mr. JULIUS. I will read the testimony.

Mr. ACKERMAN. Thank you very much.

We will keep the record open because we may have some additional questions, as well as the response we would like to have concerning the letter that we furnished a copy of to you.

Mr. JULIUS. We will be glad to respond to that.

[The letter referred to by Mr. Ackerman follows:]

DEPARTMENT OF THE TREASURY
WASHINGTON

OCT 14 1987

INFORMATION

MEMORANDUM TO SECRETARY BAKER

FROM: Lawrence B. Gibbs
Commissioner of Internal Revenue

SUBJECT: 20-Year Retirement for Revenue Officers

I am writing to you to express my support of H.R. 2532, which would amend Title 5, U.S.C., to include our Collection officers in the hazardous occupations category and entitle them to 20-year retirement.

Our internal and external studies have all shown that revenue officers suffer stressors unique to their job. Over the long term, the cumulative effect of these stressors negatively impacts revenue officer health and performance. In the short term, they impact commitment to the organization and occupational stability. Since 1984, the Service has directed a number of initiatives to address these factors. Unfortunately, some factors are beyond our control and, although our efforts have had a positive, measurable effect, they have not solved the problem. According to the latest FBI Uniform Crime Report, Revenue Officers remain the most threatened and assaulted federal officers.

Age and tenure, both together and separately, have a significant impact on a revenue officer's ability to deal with the pressures and demands of the occupation. We believe the incentive of early retirement combined with the Services's own internal programs will reduce the historically high turnover rate in the revenue officer occupation and result in a substantial gain to the Service.

I feel strongly about the advisability of this Bill and I am available to discuss the intent of this Bill at your convenience.

United States
Office of
Personnel Management
Washington, D.C. 20415

In Reply Refer To: Your Reference:

AUG 26 1988

Honorable Gary L. Ackerman
Chairman
Subcommittee on Compensation and Employee Benefits
Committee on Post Office and Civil Service
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I appreciate the opportunity to respond to the points raised by Mr. Tobias of the National Treasury Employees Union (NTEU) in favor of extending special early retirement coverage under 5 U.S.C. 8336(c) to customs inspectors and IRS revenue officers. Section 8336(c) allows Federal law enforcement officers and firefighters to retire at age 50 after 20 years of covered service. The retirement benefits of these employees are computed according to a more generous formula than those of other Federal employees.

Mr. Tobias' major points can be summarized as follows:

(1) Customs inspectors and revenue officers have law enforcement responsibilities and, therefore, are entitled to coverage under section 8336(c).

(2) Because of the hazardous, psychologically stressful, and physically arduous nature of these employees' duties, it is in the public interest to have a young and vigorous work force in these positions.

(3) Early retirement for these employees "will generate millions of dollars in revenue production."

Mr. Tobias suggests that, because customs inspectors and revenue officers perform law enforcement duties, they should be granted section 8336(c) coverage. While we recognize that the mission of customs inspectors is to guard against violations of the customs laws of the United States, the definition of "law enforcement officer" in 5 U.S.C. 8331(20) specifies that the employee's duties must primarily be the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States. Inspections performed by customs

inspectors do not constitute the same type of investigation performed by law enforcement officers who are investigating individuals who, for some specific reason, are suspected of violating a Federal criminal law. The subjects of most customs inspections are not suspected criminals. Similarly, IRS revenue officers, although they encounter hostility and occasionally violence in their attempts to collect delinquent tax payments, are not primarily engaged in investigating, apprehending, or detaining criminal suspects.

Beyond the contention that the employees in question are law enforcement officers, the NTEU argument relies heavily on the importance of hazard. Mr. Tobias implies that, in eliminating in 1974 the requirement that exposure to hazard must be considered in determining an individual's coverage under section 8336(c), Congress recognized implicitly that hazard was an essential feature of law enforcement work. He states on page 4 of his July 13 testimony that "hazardous aspects of a job are evidence that the position is physically taxing, and rises to the level of section 8336(c)(1) coverage." He concludes that customs inspectors and IRS revenue officers are entitled to such coverage because their duties are physically taxing and hazardous.

We disagree. Congress' reasoning in eliminating the explicit hazard consideration requirement from the law enforcement retirement program in 1974 reinforces the premise that hazard was never intended to form the basis of coverage under the Civil Service Retirement System's special law enforcement retirement program. House Report 93-463 of September 11, 1973, states on page 3:

> As to the matter of physical hazards or arduous work, the original legislation, which applied exclusively to agents of the FBI, had in mind individuals whose duties were primarily the investigation of crime. While the hazard was recognized, the legislation was not provided primarily because of the hazard, but, rather, primarily because of the kinds of duties and the desirability of having relatively young and vigorous persons carrying out those particular duties.
>
> ...The element of hazard was a part of the requirements for eligibility to retire only insofar as the hazard applied particularly to the individual employee, rather than generally to the position. But hazard does not enter into determining who is eligible. It first must be determined that the employee is within the category of those who have a primary duty of investigation, apprehension, or detention. (Emphasis added.)

Although both customs inspectors and revenue officers may be exposed to hazard and stress, it simply has not been demonstrated that their primary duties are the investigation, apprehension, or detention of criminal suspects and that, therefore, youth and vigor are essential to the performance of their duties.

We do not believe that exposure to hazard by itself should qualify an individual for coverage under section 8336(c). As I mentioned in my testimony on July 13, we see no way to develop an objective measurement of the degree of hazard one would have to be exposed to in order to qualify for law enforcement coverage. There would be so many occupations that, one could argue, entail exposure to hazard and/or stress that coverage would eventually be extended to anyone who could reasonably claim his or her job was, from time to time, hazardous or stressful.

We believe that exposure to hazard should be rewarded with higher salaries at the time the work is performed and the hazards are endured, rather than through the retirement system. Currently, there are two mechanisms for taking hazard into account: hazardous duty differential and position classification.

In jobs where hazard is fairly constant, hazard is taken into account in setting position classifications, which establish rates of pay. The latter, in turn, drive retirement benefits.

Where hazard is not recurring and regular, a hazardous duty differential, or "hazard pay," under 5 U.S.C. 5545(d) may be paid to employees in designated occupations for any period in which an employee is subjected to physical hardship or danger not usually involved in carrying out the duties of his or her position. In other words, hazard pay may be awarded for incidental or intermittent hazardous duty, not in occupations where hazard is a continuous element.

These mechanisms for rewarding hazardous duty have the advantage of providing virtually immediate compensation for hazards the employee faces. Moreover, we believe compensating for hazard through pay is a more effective tool for minimizing turnover than early retirement benefits.

Finally, the NTEU argues that, while the cost of section 8336(c) benefits is insignificant, early retirement coverage, particularly for revenue officers, would generate approximately $105 million a year in new revenues. The

first part of this contention is based on a serious underestimation of the cost of law enforcement retirement benefits, while the second part is based on very tenuous assumptions about the impact of these benefits on turnover.

The IRS believes that 1463 revenue officers could be expected to retire over the next 5 years at an extra annual cost of $4.2 million. However, this estimate does not take into account the fact that the employees would retire earlier under the law enforcement provisions than they otherwise would under the regular retirement provisions. We estimate that revenue officers would retire at least 4 years earlier under the law enforcement provisions. The cost of paying the law enforcement annuity for 4 additional years to 1463 revenue officer would be about $140 million, and even with earlier retirement, the law enforcement benefit would still be about $1200 a year more than the regular benefit. Moreover, the IRS has not considered the lost retirement contributions of the revenue officers for the 4 years during which the officers would have been contributing had they remained employed. These lost retirement contributions for 4 years would amount to $16 million. The extra lifetime cost of paying a law enforcement annuity, rather than a regular retirement benefit, to these revenue officers should also be considered. Assuming each annuity is paid for about 20 years, the extra cost of the law enforcement annuity would be about $35 million for 1463 revenue officers. This would bring the total lifetime cost of law enforcement retirement--for only the 1463 officers the IRS believes would retire in the next 5 years--to $191 million.

However, we would expect at least 60 percent of the current revenue officer work force (reported by IRS as 7400 employees in its September 1987 report) to eventually retire. The present value of the total lifetime extra cost of retiring these 4440 individuals (i.e., 60 percent of 7400) under section 8336(c) rather than under the regular retirement provisions would be about $500 million. If amortized over a 30-year period, this cost would require payments beginning at $22 million for the first year and increasing by 5 percent for following years.

The IRS analysis also erroneously assumes that as the revenue officer work force shifts to the Federal Employees' Retirement System (FERS), retirement costs will decline by 6 percent. The total cost to the Government of law enforcement retirement benefits under the CSRS is 36.3 percent of payroll. The total Government cost of law enforcement benefits under FERS is 35.4 percent of payroll. Thus, the IRS' assessment of the impact of

shifting the work force to FERS is seriously exaggerated.

At the same time, the contention that law enforcement coverage would generate $105 million in revenue each year is highly speculative. This appears to be based on the assumption that turnover would be reduced from 17.6 percent to 6 percent, the current rate for IRS criminal investigators, who have law enforcement coverage.

The 1987 IRS report on early retirement for revenue officers strongly implies that turnover would be reduced because law enforcement benefits would make the job less stressful. The executive summary states on page 2:

> We expect that when stabilized, a more experienced work force, relieved of some significant stresses, will create higher revenue yield.

Why or how early retirement benefits would diminish stress in a revenue officer's job is unclear. Without any clear indication that law enforcement coverage would reduce stress, the assumption that early retirement would greatly reduce turnover or improve revenue officers' efficiency is open to question.

In any event, IRS' data show that more revenues are collected by more experienced (and presumably older) officers than by those (presumably younger) with less experience. Officers in GS-12 positions collect more than twice as much revenue as GS-9's, according to the IRS. IRS itself suggests that law enforcement coverage would encourage older employees to retire earlier and would lower turnover among younger employees. (See page 2 of the IRS executive summary.) Even if there were an overall reduction in turnover attributable to section 8336(c) coverage, it is unclear at best that turnover among the most experienced and efficient revenue officers would be reduced.

Moreover, section 8336(c) coverage could not realistically be extended only to customs inspectors and revenue officers. Many other groups of employees have lobbied for these benefits. As you know, legislation currently pending in Congress (H.R. 2532) would extend section 8336(c) coverage to immigration inspectors, as well as to customs inspectors and revenue officers. We believe enactment of H.R. 2532 would inevitably lead to extension of law enforcement benefits to numerous other groups, thereby further increasing the cost.

To summarize, the cost of section 8336(c) coverage for

revenue officers and customs inspectors is substantially greater than Mr. Tobias and the IRS would have us believe. This is even more true when one understands that these special benefits could not be extended to these employees without also extending them to numerous other groups of employees whose claims would be based on their exposure to hazard rather than that they are law enforcement officers as defined by the Civil Service Retirement law. We believe Congress knew what it was doing in basing entitlement to these benefits on a definition of law enforcement work rather than the element of hazard or a list of occupations that could be too easily expanded without full consideration of the consequences. Contrary to Mr. Tobias' assertion, the only fiscally responsible position on this issue is to oppose extension of section 8336(c) coverage to groups of employees who do not meet the retirement law's definition of "law enforcement officer."

Sincerely,

Jerome D. Julius
Deputy Associate Director
for Retirement and Insurance

Mr. ACKERMAN. Our next witness will be Mr. Charles J. Murphy, President, National Immigration and Naturalization Service Council, American Federation of Government Employees. Welcome.

STATEMENT OF CHARLES J. MURPHY, PRESIDENT, NATIONAL IMMIGRATION AND NATURALIZATION SERVICE COUNCIL, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

Mr. MURPHY. Thank you, Mr. Chairman. My name is Chuck Murphy and I am a special agent with the Immigration and Naturalization Service in its New York District Office. I would like to thank you, Mr. Chairman, and also Mr. Swift and the other members of this committee, for their sponsorship of the bill and for the scheduling of this hearing today.

I have been advised that your agenda is very crowded today, so I would therefore ask that my statement be entered into the record as previously submitted and I will try and excerpt from it and make my statement as brief as I can here.

Mr. ACKERMAN. We'll place your statement in the record.

Mr. MURPHY. As the Chairman knows, 6(c) retirement was originally provided to serve as a personnel tool, to ensure that the agencies of the government would have the capability to marshal a work force that was physically capable of fulfilling the more dangerous and rigorous missions charged to the government. Given this focus, the basic question regarding H.R. 2532 was whether or not the duties of Customs and Immigration inspectors and revenue officers merit coverage under 6(c) retirement, and the answer is a resounding yes.

As Mr. Swift indicated earlier today, over the years, since 6(c) retirement became law, the duties of Immigration and Customs inspectors have changed considerably. The increased flow of illegal aliens and drugs into the country have created two of the greatest challenges we have faced. Even now the Congress is debating changes in the laws dealing with these two areas. However, while we recognize the challenges the war on drugs brings us and the war against illegal immigration brings us, we fail to pay attention to the problems faced by the employees, and we fail to give adequate credit to the employees in terms of the service that they give the government. We ask the employees to serve on the front line in the war on drugs and illegal immigration, yet we don't pay them the way we should and we don't permit them to retire the way other law enforcement officers do.

Exclusion of these positions from early retirement creates a situation that is unjust and unwise. Closely related occupations in both the Immigration Service and in the Treasury Department are already covered. As a result, officers from the inspections programs in these two agencies often leave their positions just as they are reaching their maximum effectiveness. They leave for higher graded covered positions in their own agencies and in other Federal law enforcement agencies. In the Immigration Service, the administration has recently granted coverage to a small percentage of our Immigration inspector positions. What this has done is to allow people from the other covered branches to come back into our inspections program rather than to create the maximum number of

upward mobility opportunities for the people in that particular craft.

The duties of the inspectors, though, in and of themselves, merit coverage. Many inspectors are required, depending on their duty stations, to carry weapons, they work long hours alone on the border, and at airports and seaports around the country. In many States inspectors are designated peace officers by State legislation. They're relied upon by local law enforcement agencies as members of the law enforcement community, and only their employer fails to treat them as law enforcement officers. The inspector's job is much like that of the Border Patrol agent, special agents of both agencies. Like their colleagues, they apprehend violators of the immigrations and narcotic statutes. They make hundreds of arrests. They detain those arrested and make seizures of property, vehicles, and other contraband. Their job entails investigative inquiry. It differs from that of their brother and sister officers partly in that these officers are "sitting ducks." The Customs and Immigration inspector must deal with the individual who arrives at the port of entry without the freedom that other law enforcement officers have of being able to determine when and where an arrest will be made. The Customs and Immigration inspector must deal with a crisis that they are unable to prepare for, even in terms of a few minutes notice.

The fact of the matter is that Customs and Immigration inspectors, on the average, will encounter not only far more people, but also far more felony violators and illegal entrants than will many if not most of their colleagues. Violence and resistance to arrest are a constant threat to these inspectors. Inspectors have been shot at, assaulted, and killed in the line of duty.

An additional reason to cover these Customs and Immigration inspector personnel under the 6(c) provisions is to increase the willingness of other personnel to accept positions in this field. Many enforcement personnel in the other branches, as I indicated earlier, decline to accept positions in the inspections program because of the lack of 6(c) coverage. While other branches of INS in particular are the beneficiaries of lateral movement across the branches, the inspections program is seldom, if ever, the beneficiary of such movement. In nearly 15 years of service with INS, I can cite only a single example of a colleague moving from the covered positions in our special agents corps to one in inspections. The fact of the matter is that our best special agents are former inspectors who left their own program to seek the higher grades and the hazardous duty retirement coverage outside of the inspections program.

Coverage of the Immigration and Customs inspectors under the hazardous duty provisions would help attract personnel to these occupations, and they would help keep these personnel in the occupations throughout the duration of their careers. As I indicated before, efforts are moving slowly towards the modification of the position description of the Immigration inspector to more accurately depict the employee's actual duties. In the last year, certain of these positions have been covered. The newly created Senior Inspector position carries with it the responsibilities for the prosecution of individuals encountered by inspectors on the primary line. What the administration has done is to recognize the people who

process the arrests that the inspectors make. The officer who does the most difficult and most hazardous part of the job is not recognized, but the individual who does his paperwork is.

As I indicated earlier, because of the 6(c) age limits on entry into law enforcement positions, what is happening is that the most experienced people in these occupations are not able to get the jobs. Officers from other occupational areas come in and take up the best opportunities. It is hardly just to declare war on drugs and illegal immigration and to fail to recognize equally all of the soldiers who fight the war for us. We look to the subcommittee to assist us in resolving this problem.

Thank you, Mr. Chairman.

[The prepared statement follows:]

CHARLES J. MURPHY

PRESIDENT

NATIONAL IMMIGRATION AND NATURALIZATION SERVICE COUNCIL

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

On behalf of the members of the American Federation of Government Employees, and most particularly on behalf of my colleagues in the Inspections Branch of the Immigration and Naturalization Service (I&NS) I would like to thank you for scheduling this hearing. I am pleased to be able to testify on behalf of H.R. 2532, a bill to amend Title 5 of the United States Code, to include Inspectors of the I&NS, Inspectors of the Customs Service, and IRS Revenue Agents within the immediate retirement provisions applicable to employees engaged in federal law enforcement and other hazardous occupations.

I would also like to thank Representative Al Swift of Washington, and his colleagues, for his and their sponsorship and co-sponsorship of this bill. I would recognize the Chairman and other members of this committee for their continuing efforts in support of federal law enforcement officers and federal employees in general.

Briefly H.R. 2532 expands the provisions of Section 8336(c), Title 5, U. S. Code to cover Immigration and Customs Inspectors and IRS Revenue Agents. The hazardous duty retirement provisions of the statute provides that officers working in certain occupations may retire at age 50 with twenty years of service. The law guarantees that these employees will receive a pension of 50% of their average high three years earnings. These employees also receive an additional 2% for each year of creditable government service over 20 years. The hazardous duty retirement annuity is intended to make retirement at age 55 economically feasible. The provision is intended to promote the maintainance of a young and vigorous workforce in the covered occupations. Employees covered under the statute contribute 7.5% of salary to their annuity, exclusive of certain types of overtime compensation. Other employees contribute 7% of their earnings. The law also provides for mandatory retirement at age 55 of covered employees with twenty years of service.

As the Subcommittee knows, Congress did not enact Public Law 93-350, providing for Hazardous Duty retirement, to reward federal employees who are exposed to hardship or danger on the job. Rather, these provisions were intended to serve as a personnel tool; to insure the ability of certain agencies within government to marshal a workforce physically capable of fufilling the more dangerous and rigorous missions charged to these agencies.

Given this focus, the basic question regarding HR 2532 is whether the duties of the employees covered in this bill should mandate their coverage under this personnel policy? The answer to that question is a resounding yes.

During the years since 6(c) retirement first became law the duties of Immigration and Customs Inspectors have changed considerably. The increased flow of illegal aliens and drugs into this country have created two of the greatest challenges faced by the country, and the Congress, during these years. Even now Congress debates proposals to amend our drug and immigration laws and to strengthen the ability of the government to protect our society.

While we have recognized the need to address these vital questions, we continue to ignore the employees who deal with them on our behalf. In prior years and in earlier hearings before this Subcommittee the Administration has indicated that the duties of these employee's did not merit coverage. The Administration was wrong then and is even more wrong now. More importantly, the situation has changed. The duties of these employees have become more hazardous and more rigorous, and as their duties have become more complex and more important they have become more dangerous. We ask these employees to serve on the front line in our wars against illegal immigration and the smuggling of drugs and our treatment of the employees should reflect what we ask of them. It does not.

Exclusion of these positions from early retirement creates a situation that is unjust and unwise. Closely related occupations in each agency are already covered. As a result these officers often leave their positions just as they are reaching their maximum effectiveness. They leave for higher graded covered federal law enforcement positions in their own or other agencies, or to take better paid local law enforcement opportunities. In the Immigration Service certain of these positions have recently been administratively covered under the 6(c) provisions, unfortunately most of the current incumbents cannot compete for these positions because they are too old.

The current policy creates a movement out of these branches of each agency. Inclusion of these Inspectors and Revenue Agents under this personnel policy will allow the needed recruitment of young and able workers to perform their crucial and dangerous tasks. Further, it will enable these agencies to hold onto these officers once they are recruited.

While I can not speak in detail to the range of duties in the Revenue Agent's position I can discuss those of the Immigration and Customs Inspectors. The I&NS and Custom share the inspection responsibilities at each port of entry. In many cities, but not all, Inspectors from each agency are cross designated to perform the duties of both positions. Secondary, or in depth inspections, for each agency would generally be performed by personnel from each. On the land border the Inspector receives on-the-spot assistance in identifying fugitives and other criminals, by a license number check via an electronic machine located in each Inspector's booth. These machines have immediate access to records in the Treasury

Enforcement Communications System (TECS). The I&NS Inspector at other ports of entry will also check his "Service Lookout Book" which identified known criminals likely to cross the border. In practice the personnel of both agencies rely heavily on each other.

In performing their duties these Inspectors rely on their judgement, personal observations, questioning techniques, and data bases. The information systems include data on individuals, stolen vehicles, merchandise, machinery, firearms and so forth. Every positive inquiry of the data bases must be investigated to determine if a seizure, arrest or detention or further investigative activity are required. Their every day activities demand a readiness to arrest wanted felons, smugglers, or aliens seeking admission to the U.S. illegally. These individuals may fall under the purview of Federal or State law. Both INS and Customs Inspectors are specifically given the power to search and arrest.

Many Inspectors are required, depending on their duty station, to carry weapons. They work long hours alone on the front line of the war against the entry of illegal aliens, and drugs. In many states the Inspectors are designated Peace Officers by legislation. They are relied upon by local law enforcement agencies as members of the law enforcement community. Only their employer fails to treat them as such.

The Inspector's job is much like that of the Border Patrol Agent and Special Agents of both agencies. Like their colleagues Inspectors must recognize violations of the law. They must apprehend violators of the Immigration and narcotics and hundreds of other laws. They must detain those arrested and make seizures of property, vehicles, and other contraband. Their job entails investigative inquiry and differs from that of their brother and sister officers partly in that these officers are sitting ducks, and work in a fixed location. These officers must act on an instantaneous basis and do not have the advantage of many of their other law enforcement colleagues who can choose when and where to arrest their quarry.

The fact of the matter is that that the average Immigration or Customs Inspector will encounter not only far more people but also far more felony violators and illegal entrants than will many, if not most, of their colleagues. Violence and resistance to arrest are a constant threat to Inspectors of both agencies. Inspectors have been shot at, assaulted, and killed in the line of duty.

An OPM study summarized the Immigration and Customs Inspectors duties in the following fashion: "Inspectors perform their duties undaunted by the problems and dangers involved. Their hours of work far exceed the normal 40 hour workweek. And during those few hours they have off for rest and recreation, they are often called back to work, even though they may have

just completed 12 to 16 hour shifts and are due back to work in less than 8 hours...At times, the work becomes monotonous and tiresome. However the Inspector cannot relax but must be constantly alert as to what might happen."

An Immigration Inspector, in the course of a career, reads the Miranda warning hundreds if not thousands of times. On a daily basis, the inspector faces people who have been convicted of the full range of criminal activities. As we have already indicated many of these officers work alone. The Inspector has full responsibility for carrying out the Government's ZERO TOLERANCE PROGRAM against drugs, including the interrogation of suspects and seizure of vehicles. Can we ask our Inspectors to inspect and seize a vehicle, and then to arrest its occupants, and not extend to these employees the full protection we give to those in similar positions?

Clearly there is a need for a young and vigorous workforce capable of meeting the needs of the Immigration and Customs Inspector positions. Hazardous Duty Retirement would guarantee that older personnel who, because of the stringent physical and mental stresses in these positions, can no longer perform at peak efficiency, will be replaced.

An additional reason to cover Inspector personnel under the 6(c) provisions is to increase the willingness of other personnel to accept positions in this field. Many enforcement personnel in other I&NS branches decline to accept positions in the Inspections Program because of the lack of 6(c) coverage. While other branches of the I&NS are the benefits of lateral movement across various branches the Inspections program is seldom if ever the beneficiary of such movement. In nearly fifteen years of service with I&NS I can cite only a single example of a colleague moving from a covered enforcement position to one in Inspections. The fact of the matter is that many of our best Special Agents are former Inspectors who left their own branch for the grades and retirement benefits available in other areas of the Service.

Coverage of the Immigration and Customs Inspectors under the Hazardous Duty Retirement provisions of current law would help to attract other personnel to these occupations and to induce officers to stay in these critical positions. It would additionally lend renewed vigor to the Branch as a whole through attraction of a younger and more energetic workforce thereby reducing certain of the hazards of the job itself and increasing the effectiveness of the Service.

Given the overwhelming need for Hazardous Duty Retirement for these officers the I&NS Council wholeheartedly urges the adoption of H.R. 2532. We have tried for years to get an administrative ruling from OPM which would include Immigration and Customs Inspectors under the existing law.

Efforts are slowly moving toward modification of the

Inspector's position description to more accurately depict the employee's actual duties. In the past year I&NS has recognized the true nature of the Inspector's duties and created a small number of covered positions within the Branch. The newly created Senior Inspector position carries with it the responsibility for the Senior Inspector to pursue the prosecution of individuals encountered by Inspectors on the primary line. The Inspector making an apprehension is not covered but the Senior Inspector who processes the case is.

The most ironic facet of the current situation, however, is that age limits on entry into the covered positions prevent several thousand Immigration Inspectors from obtaining entry into the Senior Inspector positions for which they are obviously the most qualified. Each position is classified in the same GS-1816 occupational area yet the older more experienced officers are denied movement into covered positions in their own career fields. While we appreciate the small number of covered positions created within the Branch we feel the Administration's approach is penny wise and pound foolish. It is hardly just to declare war on drugs and illegal immigration and to fail to recognize equally all of the soldiers who fight the war for us. We look to the Sub-committee to assist us.

Are Immigration and Customs Inspectors excluded from 6(c) retirement because their jobs are not hazardous? No. The OPM report I mentioned earlier states "We are aware that there is a hazard inherent in these positions..."

Are these Inspectors excluded from 6(c) coverage because their jobs are not connected with law enforcement activities? No. the same report concluded "Without a doubt the duties of the Customs and Immigration Inspectors have changed in the past few years from the public image of meeter and greeter to an employee more involved with crime and law enforcement."

These officers are excluded from the current law solely because of the narrow definition of law enforcement officer contained in Section 8336 (20). AFGE and the I&NS Council look forward to working with this Subcommittee to remedy this unjust situation.

Thank you for this opportunity to testify. I would be glad to answer any questions you might have.

Mr. ACKERMAN. Thank you very much, Mr. Murphy.

Perhaps you can tell us what is the percentage of time that Immigration inspectors spend in law enforcement activities.

Mr. MURPHY. I would say that all of their activities are law enforcement activities, Mr. Chairman. Every inspection that an Immigration inspector makes is to determine whether or not an individual has previously violated the law or is eligible for admission into the United States, or brings with him any form of contraband.

Mr. ACKERMAN. Would you consider that a secondary responsibility?

Mr. MURPHY. No, sir.

Mr. ACKERMAN. A tertiary responsibility?

Mr. MURPHY. No, sir.

Mr. ACKERMAN. An insignificant part of their responsibility?

Mr. MURPHY. Not at all, sir.

Mr. ACKERMAN. If I haven't left anything out, I guess we have to come to the conclusion that that's a primary responsibility?

Mr. MURPHY. Yes, sir.

Mr. ACKERMAN. Can you tell us how many of them might be armed?

Mr. MURPHY. All of our Immigration inspectors on the land borders are armed, with a very, very few exceptions, a smaller percentage at our airports, and all of our inspectors at our seaports are armed. I would say probably 75 percent of the inspector corps is presently armed.

Mr. ACKERMAN. What kind of law enforcement training do Immigration inspectors receive?

Mr. MURPHY. Immigration inspectors receive the same law enforcement training as all of our other Immigration officers. They receive the same training as our special agents, our deportation officers, our immigration examiners. The training is exactly the same.

Mr. ACKERMAN. Is law enforcement training a significant part of their training?

Mr. MURPHY. Yes, sir, it is.

Mr. ACKERMAN. Could you tell us if INS is encountering any serious problems with recruiting and retaining inspectors, and if the answer is yes, would the prospect of early retirement help solve that problem?

Mr. MURPHY. We have both problems in recruiting personnel into the programs generally because of the differential between law enforcement salaries in State and local government and the Federal sector, but we also have problems within the agency once we recruit personnel into the law enforcement programs because our inspector program, as I indicated, is not covered. So what happens is, individuals will come on the job, they will work three or four or five years, develop the experience, the expertise that will make them optimum candidates, if you will, for other agencies to recruit them.

We lose a large percentage, probably 10 to 15 percent a year, of our Immigration inspectors to our own investigative programs, as well as to other agencies such as DEA, the FBI, and Customs. So retention of these inspectors would be greatly benefited if we could afford them. They go for their hazardous duty retirement.

Mr. ACKERMAN. Are those retirement systems interchangeable? Do you move with your pension?

Mr. MURPHY. Yes, sir, they do.

Mr. ACKERMAN. So you're under the gun twice, actually, losing people to the competition, first of all, because of inequities and compensation, and then, if they move into another system, there's a truncated period for their retirement. So they are doubly induced to move?

Mr. MURPHY. That is correct, sir.

I may have misunderstood your question. Federal law enforcement retirement and Federal retirement is not transferable into the State or local systems. However, it is into the other Federal agencies.

Mr. ACKERMAN. I understood that. Thank you.

We are joined by a very distinguished member of our subcommittee, Congresswoman Constance Morella, who we are delighted to have with us today.

Mrs. MORELLA. Thank you, Mr. Chairman.

Mr. ACKERMAN. You can make a statement, ask questions, do anything you want.

Mrs. MORELLA. Thank you. I do have an opening statement that I would like to ask your consent to put into the record.

Mr. ACKERMAN. Without objection.

[The statement of Hon. Constance Morella follows:]

STATEMENT OF HON. CONSTANCE A. MORELLA

Mr. Chairman, I am pleased to attend this hearing on H.R. 2532, a bill which would include inspectors of the Immigration and Naturalization Service, inspectors of the U.S. Customs Service and revenue officers of the Internal Revenue Service within the retirement provisions which are applicable to employees who are engaged in hazardous occupations.

I note that the sponsor, Mr. Swift, is with us today and I commend him for his hard work on the bill and for obtaining 86 cosponsors. I am also very pleased that the witnesses who are appearing before us today represent a varied group of professionals.

Indeed, the groups of people who wish to be included in the legislation have described the hazardous situations which they may encounter during the course of their duties. I also notice that the Office of Personnel Management has made reference that there is statutory definition of "law enforcement officer" and "firefighter" which governs the provision of early retirement for those individuals whose primary responsibilities are investigation, apprehension, and detention. I am sure that the testimony will help to clarify many of the questions which are in my mind.

Mr. Chairman, thank you for holding this hearing.

Mrs. MORELLA. I am pleased to be here at the meeting and to listen to our professional people expound on why they think they should have this kind of equity. I have just one question I would like to ask as a result of the testimonies that have been presented.

How would you feel about paying that 7.5 percent contribution requirement that applies to Federal law enforcement officers?

Mr. MURPHY. I don't think there would be any objection at all.

Mrs. MORELLA. There would be no problem if that comparability, in terms of the mandatory retirement and that 7.5 percent, would be included in the bill.

That's all I have, Mr. Chairman. Thank you.

Mr. ACKERMAN. Thank you very much.

Our next witness will be Mr. Patrick F. Smith, Director of Legislation, National Treasury Employees Union, accompanied by Mr. Kevin Fox, President of NTEU Chapter 153, and Ms. Jan Smola, President, NTEU Chapter 33. Welcome.

STATEMENT OF PATRICK F. SMITH, DIRECTOR OF LEGISLATION, NATIONAL TREASURY EMPLOYEES UNION, ACCOMPANIED BY KEVIN FOX, PRESIDENT, NTEU CHAPTER 153; AND JAN SMOLA, PRESIDENT, NTEU CHAPTER 33

Mr. SMITH. Thank you, Mr. Chairman. I will present my statement, and then my colleagues have two very short statements to make, and then we'll be available for your questions.

NTEU is the exclusive representative of over 130,000 Federal employees, including virtually all nonsupervisory revenue officers and Customs inspectors, all of whom would be affected by H.R. 2532.

NTEU believes the record clearly supports inclusion of these employees in the 20-year retirement law, as Customs inspectors and IRS revenue officers work meets the congressional intent regarding section 8336(c)(1). Specifically, their work is physically taxing and hazardous and it is in the public's interest to have a vigorous work force in the occupations.

Customs enforces over 400 statutes and regulations for 40 different Federal agencies. To accomplish this mission, Customs inspectors search aircraft, vessels, automobiles and railcars. This requires bending, lifting or moving heavy containers, kneeling or stooping for prolonged periods, and crawling into cramped cargo holds. Inspectors are sometimes required to disembark from larger ships on to smaller craft in all types of weather conditions, and stand for hours at land border crossings in an awkward position, breathing exhaust fumes.

Inspection of people is often physically strenuous, as individuals may resist a search, apprehension, or arrest. Inspectors have to disarm and/or subdue a suspect, and pursue on foot individuals who attempt to escape custody.

The hours of work are excessive, often times as much as 12 to 16 hours a day, and much of that work occurs on irregular shifts. In fact, it is not uncommon for inspectors to be called out at any time before or after working their assigned shifts.

The Customs inspector position is also hazardous. In fiscal year 1986 inspectors made 84.4 percent of all the Customs Service's arrests, totaling 22,212 arrests, up 28 percent from fiscal year 1985. In an October 19, 1987 letter from William A. Riley, Comptroller of the Customs Service, to Senator Leahy, Mr. Riley stated that Customers officers have been shot, stabbed, run over, dragged by automobiles, and assaulted with blunt objects while performing their duties. During 1986 alone, Customs officers were the victims of assault on 32 occasions, and were shot at on 15 different occasions. Since 1974, nine officers have died in the line of duty.

All inspectors are now issued firearms to protect themselves, their fellow inspectors, and innocent third parties. This decision was a necessary response to the increasing violence faced by inspectors in the performance of their duties. Inspectors have for some time operated with the Treasury Enforcement Communica-

tions System which, because it is connected to the National Crime Index Center computer, contains warrants for people wanted by Federal, State and local law enforcement agencies. Inspectors are required to arrest these fugitives, many of whom are charged with crimes such as murder, robbery and rape, and detain these people until the fugitives are transported to jail. So it is the inspectors, not law enforcement personnel, who make the initial apprehension and detention.

Customs inspectors duties also require them to execute and serve any order or warrant under the authority of the United States, make an arrest without warrant for any offense committed against the United States in the officer's presence, or for felonies committed out of the officer's presence if there are reasonable grounds for suspicion, and perform any other law enforcement duty designed by the Secretary of the Treasury.

Customs is also charged with the task of spearheading our Nation's fight against the importation of illegal drugs. Inspectors are an integral part of that responsibility. Drug dealers, as we all know, are well-financed and dangerous. Our country needs an alert, vigilant inspector corps to protect our borders.

The threat of terrorism is also an increasing concern. Many terrorists carry automatic weapons and explosives, and all are determined to make their statement through violence. Inspectors again are called upon to be the first line of defense against such people.

The Customs Service itself recognizes that Customs inspectors should be entitled to section 8336(c)(1) 20-year retirement. Commissioner Von Raab, in 1983, petitioned the Office of Personnel Management in an effort to have inspectors included but was rebuffed. In 1988, in response to a question posed by Congressman Coleman, the Commissioner acknowledged that such a provision would enable the Customs Service to maintain a young and vigorous work force.

The IRS revenue officer position is also physically taxing, and is the most hazardous position within the Treasury Department. The physical demands are evidenced by heavy workloads, the high rate of stress, resulting in a variety of physical and mental symptoms and adverse impact on job performance. The hazardous nature of the revenue officer position is supported by an IRS statistical report which shows that revenue officers are the subject of 88 percent of all incidents reported for the Department of Treasury in 1986.

In 1985, the IRS commissioned a study by Dr. Bronson T. Mayes which identified the stress-producing factors present in the RO function and analyzed the impact of that stress. This report confirmed the agency's suspicion. Specifically, older, longer tenured revenue officers cannot cope as well with the negative aspects of the job, including workload, danger, and potential for danger to others. Also, the personal strains and predicable negative job outcomes are higher for older revenue officers. The potential for being threatened, assaulted or caught unaware is ever-present. The mental stress of facing a violent confrontation at any time, and from seemingly unsuspected sources, can exact a severe toll.

Dr. Mayes' study confirms what revenue officers, both management and bargaining unit, have been telling NTEU for some time,

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that hazards and the resulting stress are an everyday occurrence. Revenue officers have recounted incidents where they have been attacked by dogs, hit by cars, threatened with shotguns, handguns, deer hunting rifles, knives and hammers. Verbal abuse and telephone threats against both the revenue officer and his or her family are commonplace.

Another reason for stress is that the revenue officers are forced to attempt collection from drug dealers and members of organized crime. A revenue officer in Pennsylvania, a veteran of 21 years, reported that he and his family have in the past been put under protective surveillance because information was received by IRS that a contract was put out on his life. Another officer in New Jersey reported that he and his family were under protection for a month.

Many telephone threats are sufficiently specific that it is apparent the perpetrator was watching the revenue officer's house. This is particularly onerous when the threats come from an illegal tax protest group like the Posse Comitatus.

There is an upward trend of threats and assaults against revenue officers. The IRS found in its 1987 study that the illegal tax protest movement is growing. Groups such as the Posse Comitatus, which advocate violence against IRS employees, are a significant threat. As partial response to these problems, the Service proposed in its study a 20-year retirement option because it would encourage the older employees to take an early retirement and would promote a young and vigorous work force to accomplish the mission of the Service.

Supporting H.R. 2532 also is fiscally responsible. The IRS, in its 1987 study, anticipates that while annuity payments will increase by almost $508,000 annually, training costs could be reduced by as much as $2 million annually, and revenues collected increased by as much as $105 million annually. We understand that these projections are tentative. However, even a fractional increase in the $105 million projected as revenue to be collected would more than outweigh the increase in annuities.

If a similar study is conducted with regard to Customs inspectors, a similar result is likely. Inspectors play an integral part in the collection of duties and other charges, and a more experienced inspector will likely collect more than a less experienced inspector. Furthermore, because the Customs Service is the second largest revenue-producing agency in the Federal Government, the additional revenue collected would undoubtedly exceed the increase in annuities.

In conclusion, equity demands that Customs inspectors and IRS revenue officers be afforded a 20-year retirement benefit. Both jobs are very physically taxing and hazardous, and it is clearly in the public's interest to have a vigorous work force in both occupations. Furthermore, because of their unique situation of being in revenue-producing positions, it makes fiscal sense to support H.R. 2532.

That concludes my remarks, Mr. Chairman. I would now like to turn it over to my colleagues.

[The statement of Robert M. Tobias, as delivered by Patrick F. Smith, follows:]

STATEMENT OF ROBERT M. TOBIAS, NATIONAL PRESIDENT,

NATIONAL TREASURY EMPLOYEES UNION

Chairman Ackerman, and members of the subcommittee:

Thank you for holding this hearing on H.R. 2532, a bill which amends sections 8336 (c)(1) and 8331 of title 5 of the United States Code, to include inspectors of the Immigration and Naturalization Service, inspectors of the United States Customs Service, and revenue officers of the Internal Revenue Service within the immediate retirement provisions currently applicable to federal law enforcement officers and firefighters.

The National Treasury Employees Union is the exclusive representative of over 130,000 federal employees, including virtually all non-supervisory revenue officers and Customs inspectors, all of whom would be affected by H.R. 2532. NTEU believes the record clearly supports inclusion of these employees under the section 8336 (c)(1) provision as Customs inspectors' and IRS revenue officers' work meets the Congressional mandate of being physically taxing and hazardous, and it is in the public's interest to have a vigorous workforce in these occupations. Furthermore, because providing a 20 year retirement option for these employees will generate millions of dollars in revenue production, one would be fiscally irresponsible not to support the bill.

EXPANSION OF SECTION 8336 (c)(1) COVERAGE TO INCLUDE CUSTOMS INSPECTORS AND IRS REVENUE OFFICERS IS CONSISTENT WITH CONGRESSIONAL INTENT

The current section 8336 (c)(1), which offers retirement at age 50 after 20 years service, evolved from a provision which

originally applied only to the Federal Bureau of Investigation.[1] That provision was expanded a year later to cover officers and employees whose duties "... are primarily the investigation, apprehension, or detention of persons suspected or convicted of offenses against the criminal laws of the United States."[2] The law was amended again in 1972 to include firefighters, as Congress recognized that this occupation was sufficiently hazardous and arduous to warrant a 20 year retirement option.[3]

In 1974, Congress overhauled the system, and amended title 5 with respect to the retirement of law enforcement officers and firefighters.[4] Among those issues addressed was eligibility. Prior to 1974 and P.L. 93-350, law enforcement officers and firefighters had to obtain their employing agency's recommendation and the approval of the Civil Service Commission in order to be granted 20 year retirement.

Specifically, before 1974, a law enforcement officer or firefighter was required to file an application for retirement, which was reviewed by the head of the department or agency in

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1/ P.L. 80-168, July 11, 1947

2/ P.L. 80-879, July 2, 1948

3/ P.L. 92-382, 86 Stat. 539, August 14, 1972

4/ P.L. 93-350, 88 Stat. 356, 1974 U.S. Code Cong. and Adm. News p. 3698, July 12, 1974.

which the employee worked. If the application received the agency head's approval, it went to the Civil Service Commission for review. The Commission would determine whether an employee was entitled to 20 year retirement, giving "... full consideration to the degree of hazard to which such officer or employee is subjected in the performance of his duties, rather than the general duties of the class of the position held by such officer or employee."[5/]

Congress removed the provision requiring agency and Civil Service Commission approval in P.L. 93-350, thereby granting 20 year retirement to the class of employees which fit in the law enforcement officer and firefighter classifications. There was no longer a duty to establish that one's individual experiences were hazardous.

With passage of P.L. 93-350, Congress rejected the earlier notion that an individual must prove that he/she earned the right to 20 year retirement by surviving in a hazardous environment. Rather, Congress found that the class of employees working as law enforcement officers and firefighters are working in occupations that are physically very demanding, and that it is in the public's interest to have a younger workforce in place in those areas. Specifically, Congress found that the "nature of the work involved"[6/] when

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5/ Poston v U.S., 289 F.2d 321, 322 (1961)

6/ P.L. 93-350, Supra, 1974 U.S. Code Cong. and Adm. News, p. 3699.

considering law enforcement officers and firefighters was "far more taxing physically then most in the Federal Service",[7] and "... that these occupations should be composed, insofar as possible, of young men and women physically capable of meeting the vigorous demands ..."[8].

All three elements (physically taxing, hazardousness, and the public's interest in a young workforce) must be present if a position is to be eligible for inclusion under section 8336 (c)(1). While the obligation of an applicant for retirement to prove he/she personally faced dangers on the job was removed, it is clear that Congress considered the law enforcement and firefighter positions, as a whole, hazardous; and it was this factor which distinguished these positions from other federal jobs which are merely physically taxing. In addition, hazardous aspects of a job are evidence that the position is physically taxing, and rises to the level of section 8336 (c)(1) coverage.

Customs inspectors and IRS revenue officers should also be covered by section 8336 (c)(1) because those positions fit the Congressional profile for eligibility. Both jobs are physically taxing, with the element of danger which establishes them as hazardous occupations. In addition, it is clearly in the public's interest to maintain a young workforce, capable of meeting the demands of these positions.

7/ Id.

8/ Id.

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U.S. Customs Service Inspectors

The Customs Service enforces over 400 statutes and regulations for 40 different federal agencies. To accomplish this mission Customs inspectors search aircraft, vessels, automobiles and railcars. This requires bending, lifting or moving heavy containers, kneeling or stooping for prolonged periods, and crawling into cramped cargo holds. Inspectors are sometimes required to disembark from larger ships onto smaller craft in all types of weather conditions, and stand for hours at land border crossings in an awkward position, breathing exhaust fumes.

Inspection of people often is also physically strenuous, as individuals may resist a search, apprehension or arrest. Inspectors may have to disarm and/or subdue a suspect, and pursue on foot individuals who attempt to escape custody.

The hours of work are excessive, often times as much as 12 to 16 hours a day, and much of that work occurs on irregular shifts. In fact, it is not uncommon for inspectors to be called out at anytime before or after working their assigned shifts.

In a 1978 study for the U.S. Department of Health and Human Services, Dr. Donald L. Tosto found that rotational shifts had numerous deletorious effects on employees who worked them. The results of the study showed that shift workers tend to report more physical complaints, more problems with sleep, more fatigue, and greater personal and domestic problems than other workers. These findings provide further evidence of the physical and psychological strains faced by inspectors.

The Customs inspector position is also hazardous. In fiscal year 1986 inspectors made 84.4% of all the Customs Service's arrests, totaling 22,212 arrests, up 28% from fiscal year 1985. In an October 19, 1987 letter from William A. Riley, Comptroller, U.S. Customs Service, to Senator Patrick Leahy, Mr. Riley stated "Customs Officers have been shot, stabbed, run over, dragged by automobiles, and assaulted with blunt objects while performing their duties. During 1986 alone, Customs Officers were the victims of assault on 32 occasions, and were shot at on 15 different occasions. Since 1974, nine officers have died in the line of duty."1/

All inspectors are now issued firearms to protect themselves, their fellow inspectors and innocent third parties. This decision was a necessary response to the increasing violence faced by inspectors in the performance of their duties. Inspectors have for some time operated with the "Treasury Enforcement Communications System" (TECS), which, because it is connected to the National Crime Index Center computer, contains warrants for people wanted by federal, state and local law enforcement agencies. Inspectors are required to arrest these fugitives, many of whom are charged with crimes such as murder, robbery and rape; and detain these people until

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1/ Attachment #1

the fugitives are transported to jail. So it is the inspectors, not law enforcement personnel, who make the initial apprehension and detention.

In Mr. William F. Riley's letter, he confirms the danger faced by inspectors necessitating the issuance of firearms to all. "Until recently, only about 2,000 Customs Inspectors, out of a nationwide total of 5,000, were authorized to carry firearms. However, in light of the clear and constant threat to our inspectional personnel, all inspectors receive firearms training and are authorized to carry a weapon during performance of official duties."10/

Customs is also charged with the task of spearheading our nation's fight against the importation of illegal drugs. Inspectors are an integral part of that responsibility. Drug dealers, as we all know, are well financed and dangerous. Our country needs an alert, vigilant inspector corps to protect our borders.

Concerning the issue of drug smuggling and the inspectors' role, Mr. William F. Riley states: "As you are aware, the investigation, apprehension and detention of persons suspected of smuggling drugs is an important and dangerous law enforcement job, requiring skilled personnel that can be trusted to react quickly and responsibly in difficult situations, and devote their full energies to the job. Drug

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10/ Ibid.

smugglers do not hesitate to use violence to avoid apprehension and thus continue their extremely lucrative criminal enterprise."11/

The threat of terrorism is also an increasing concern. Many terrorists carry automatic weapons and explosives, and all are determined to make their statement through violence. Inspectors, again, are called upon to be the first line of defense against such people.

There are elaborate terrorist contingency plans in place at various ports around the country. These plans involve Customs Inspectors, Customs agents, FBI agents, Port Authority police, and the city police. An example of this group in action took place in August, 1987, at JFK Airport when information was received of stowaways aboard a cargo flight from Lebanon. The crew radioed for instructions and was ordered to taxi to a remote area of the field. The area was cordoned off as the Customs inspectors boarded the flight, searched the cockpit, released the crew, then entered the cargo hold and located the perpetrators. The inspectors turned them over to the Customs Agents. Everyone engaged in that operation was covered by section 8336 (c)(1), except the inspectors. Yet, in taking the lead, the inspectors clearly were in the greatest danger.

11/ Ibid.

Inspectors on our country's Southwest border have, for years, been operating in the capacity of quasi-law enforcement officers, and they face the hazards of detaining felons, drug smugglers and terrorists at an ever increasing rate. For example, Inspector Glenn R. Burow of San Diego, California, stated in a letter to NTEU:

> I have been a Customs Inspector for over 20 years, in those 20 years I have been exposed to numerous dangerous life threatening situations, the following are just a few:
>
> I was kidnapped by a smuggler and taken to Mexico.
>
> A smuggler that I arrested put a contract out to have me killed. I was advised for the protection of my family and me to always carry my gun while off duty, which I did for almost three years.
>
> In the last year the port of entry where I work was put on terrorist alert twice.
>
> I long ago lost count of the number of felony warrant arrests I have made at the border. Many of these arrests involved persons carrying loaded weapons.
>
> Today all inspectors are required to carry a firearm while on duty. Most inspectors wear bullet proof vests. A month doesn't go by that some inspector is not accosted.

All inspectors, no matter where they are stationed, work in a very hazardous environment. Inspector Dennis H. Byrne works on our country's northern border, at Sweetgrass, Montana. Mr. Byrne states:

> In my four years as a Customs Inspector I have been stationed at Sweetgrass, Montana. During that time the Customs inspectors at this Port have been involved in hundreds of arrests of persons in violation of state or federal law and Canadian and NCIC fugitives. From time to time individuals have resisted arrest and assaulted inspectors creating very dangerous situations. I have personally been involved in situations where I have had to wrestle suspects to the floor in order to subdue them.

To give you an idea of the law enforcement situation experienced by Customs inspectors, here at Sweetgrass, Mt., I have compiled the following enforcement statistics from last month, February 1988:

55 drug and/or drug paraphernalia seizures
34 arrests for violations of Montana Law
7 arrests (Canadian Fugitives)
1 arrest (NCIC Fugitive)
6 seizures for other Customs violations

Typically we make between 300 and 400 seizures and/or arrests here at Sweetgrass, Mt. every year, and this Port is a relatively small one staffed with, usually, only seven or eight inspectors. You might immagine the enforcement situations at the larger Ports.

In some states Customs inspectors have an affirmative obligation under law to respond to felonies they witness. This responsibility goes beyond their duty to detain criminals at our nation's border, and is clearly a criminal law enforcement function. Many inspectors work in isolation and late hours, even at large ports. Obviously, this practice puts them at greater risk. In a 1979 Customs Service report the issue of isolated work sites was noted as a common problem. In that report Customs states:

> Customs inspectors are stationed throughout the United States and its territories wherever people and merchandise arrive from foreign countries, and in preclearance stations abroad. The work sites range from very large facilities which process thousands of foreign arrivals daily, to remote, isolated stations where inspectors must travel great distances under difficult environmental conditions to perform inspections and enforce the laws of the United States. In many cases, that Customs inspector is the only law enforcement officer on the scene. State and local authorities may be miles away, without reliable telephone contact. The remote locations where inspectors are stationed include airports, seaports, and land border ports. (Emphasis Added)[12/]

12/ Report on Special Early Retirement for Customs Inspectors, U.S. Customs Service, Border Operations, Office of Inspection, December 1979.

The Customs Service itself recognizes that Customs inspectors should be entitled to section 8336 (c)(1) 20 year retirement. Commissioner von Raab in 1983 petitioned the Office of Personnel Management in an effort to have inspectors included, but was rebuffed. In 1988, in response to a question posed by Congressman Ronald D. Coleman, the Commissioner stated:

> The Customs Service has in the past supported the spirit and intent of similar legislation. If enacted, these bills would provide inspectors the opportunity to retire at the age of 50, with 20 years of service. It would also enable the Customs Service to maintain a young and vigorous workforce. However, the Administration has not been in favor of this legislation because of the budgetary impact.[13/]

It is certainly in our country's interest to have a young inspector workforce. As discussed above, the inspectors' duties are physically taxing, and there is the ever present element of danger inherent in a job where employees are required to detain felons, drug smugglers, terrorists and others, while often working in isolated locations.

Keeping our borders secure is one of the primary duties of the Federal government. Younger and experienced Customs inspectors could better perform that task. The government could achieve both goals (retain experienced people, and maintain a younger workforce) by granting inspectors a 20 year retirement option. Such an option is necessary to retain

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13/ Attachment #2.

those who would leave the Service before serving 20 years, but it would also require retirement when the employees are generally not able to withstand the physical demands of the job.

IRS Revenue Officers

The revenue officer position is also physically taxing, and is the most hazardous position within the Treasury Department. The physical demands are evidenced by heavy workloads, and the high rate of job stress, resulting in a variety of physical and mental symptoms, and adverse impact on job performance. The hazardous nature of the revenue officer position is supported by an IRS statistical report, which shows that revenue officers are the "... subject of 88 percent of all incidents reported for the Department of Treasury in 1986."14/

Revenue officers are responsible for closing delinquent income and business tax accounts. They are assigned cases only after the IRS has afforded the taxpayers numerous opportunities to pay their delinquent taxes, or to file their delinquent returns. Taxpayers are first sent a notice of delinquency. If they neglect or refuse to respond to this initial notice, three or four more notices are generally sent. If the taxpayer still does not pay the tax liability or file the returns, the Service

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14/ Early Retirement for Revenue Officers, Assistant Commissioner (Collections), Internal Revenue Service, September, 1987, p.1. (hereinafter 1987 IRS Study) (See Attachment #3)

continues routine office processing. The office activity may include telephone calls to the taxpayer and a search of office records and tax returns to locate assets or leads. Cases not closed after this extensive processing are forwarded to revenue officers for a thorough, professional field investigation.

To perform their duties, revenue officers are delegated unparalleled authority and bear the responsibility for the soundness of their decisions and actions. A revenue officer's decision to file a notice of lien, to serve a notice of levy or to seize and sell a taxpayer's property is normally accepted as final. Each day, the job calls for numerous confrontations with taxpayers, any one of which could explode into an assault situation. For a revenue officer to do the job competently, contact with taxpayers, and enforced collection actions are essential.

In 1985, the IRS commissioned a study by Dr. Bronston T. Mayes[15/] which identified the stress-producing factors present in the revenue officer function, and analyzed the impact of that stress. The report confirmed the agency's suspicion. Specifically, older, longer tenured revenue officers cannot cope as well with the negative aspects of the

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15/ Revenue Officer Job Stress: A Nationwide Assessment of Job Stressors and Challenges and Their Implications for Health and Organizational Effectiveness; Bronston T. Mayes, Ph.D., California State University, Fullerton; October 6, 1985.

job, including workload, danger, and potential for danger to others. Also, the personal strains and predicable negative job outcomes are higher for older revenue officers. The potential for being threatened, assaulted or caught unawares is ever-present. The mental stress of facing a violent confrontation at anytime, and from seemingly unsuspected sources, can exact a severe toll.16/

Dr. Mayes' study confirms what revenue officers, both management and bargaining unit, have been telling NTEU for some time - that hazards, and resulting stress, are an every day occurance. Revenue officers have recounted incidents where they were attacked by dogs, hit by cars, threatened with shotguns, handguns, deer hunting rifles, knives, and hammers. Verbal abuse and telephone threats, against both the revenue officer and his/her family, are commonplace.

Another reason for stress is that the revenue officers are forced to attempt collection from drug dealers, and members of organized crime. A revenue officer in Pennsylvania, a veteran of 21 years in the IRS, reported that he and his family have in the past been put under protective surveillance because information was received by IRS that a contract was put out on his life. Another officer in New Jersey reported that he and his family were under protection for a month.

16/ Ibid., p. 17 and 18.

Many telephone threats are sufficiently specific that it is apparent the perpetrator was watching the revenue officer's house. This is particularly onerous when the threats come from an illegal tax protest group like the Sheriff's Posse Comitatus.

In letters to NTEU and in Dr. Mayes's study, virtually everyone reported the physical manifestations of stress and burnout - high blood pressure, stomach problems, the inability to sleep, suicide of co-workers, just to name a few. And everyone agreed on at least one thing - danger is the norm; it is routine. Everyone experiences the stress.

Mr. David Long, an inspector of more than 18 years from Pflugerville, Texas, expressed it best:

> I've been a revenue officer over 18 years. I've personally known two revenue officers who were physically assaulted by taxpayers, right in their own offices. While I haven't been assaulted, I've been threatened and harassed at home by taxpayers who see the revenue officer as their problem and not their failure to comply with the tax laws. Indeed, I haven't been listed in the phone directory for over 15 years just to avoid confrontations outside of duty hours.
>
> But what concerns me the most, is that in my 18 plus years, I have yet to see a revenue officer retire normally with 30 years in the field. I've known and worked with 21 revenue officers who have retired. 17 of them retired on disability and at least two of those died within two months. The other four were not field officers for 30 years -- one was retired military who spent 12 years as a revenue officer and the other three were in staff jobs or management for half or more of their careers. I've made a lot of personal sacrifices by working for the government, including 3 years in the US Army from 1964 to 1967 and I want to enjoy my retirement and spend time with grandchildren, not spend it in a hospital.

As stated above, the 1987 IRS Study concludes that the revenue officer position is the most hazardous in the Department of Treasury, including the Secret Service.[17/] Furthermore, there is an upward trend of threats and assaults against revenue officers. The IRS also found that the illegal tax protest movement is growing. Groups such as the Sheriff's Posse Comitatus, which advocates violence against IRS employees, are a significant threat.[18/]

As a partial response to these problems, the Service proposed in its 1987 study a 20 year retirement option because it "... would encourage the older employees to take an early retirement and would promote a young and vigorous workforce to accomplish the mission of the Service."[19/]

Estimated Cost of Early Retirement

The 1987 IRS Study also projected estimated costs of providing a 20 year retirement option. In summary, it states that over the next 5 years a maximum of 1,463 revenue officers could retire at a direct incremental cost of $4.2 million to the retirement system.[20/] However, this is "... nothing

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17/ 1987 IRS Study, p. 1.

18/ Ibid., p. 13 and 14.

19/ Ibid., p. 2

20/ Ibid., p. 23.

compared to the millions of dollars that can be saved by the reducing turnover costs and the many millions generated in direct revenue production."[21/]

In summary, the IRS anticipates that while annuity payments will increase by almost $508,000 annually, training costs could be reduced by an much as $2 million annually, and revenues collected increased by as much as $105 million annually.[22/] We understand that these projections are tentative. However, even a fractional increase in the $105 million projected as revenue to be collected would more than outweigh the increase in annuities.

If a similar study is conducted with regard to Customs inspectors, a similar result is likely. Inspectors play an integral part in the collection of duties and other charges, and a more experienced inspector will likely collect more than a less experienced employee. Furthermore, because the U.S. Customs Service is the second largest revenue producing agency is the Federal government, the additional revenue collected would undoubtedly exceed the increase in annuities.

21/ Ibid.

22/ Ibid., p. 27

Conclusion

Equity demands that Customs inspectors and IRS revenue officers be afforded a 20 year retirement option under section 8336 (c)(1). Both jobs are very physically taxing and hazardous, and it is clearly in the public's interest to have a vigorous workforce in both occupations. Furthermore, because of their almost unique situation of being in revenue producing positions, it makes fiscal sense to offer these employees a 20 year retirement option.

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STATEMENT OF KEVIN FOX, PRESIDENT, NTEU CHAPTER 153, U.S. CUSTOMS SERVICE, NEW YORK, NY

Mr. Fox. My name is Kevin Fox. I'm a senior Customs inspector at JFK Airport, with 13 years experience.

H.R. 2532 will be of personal benefit to me and my colleagues around the country, a benefit that I feel we justly deserve. I am in excellent health, as I have been athletic all my life. Yet, in my late 30's, I have noticed it is becoming harder to perform my functions at the consistently high standards that I have set for myself.

The demands placed on an inspector include long and unpredictable hours, rotating shifts, constant contact with masses of people, with the requirement to make processing decisions quickly. The need for total attention on surveillance on lookouts, the bending, climbing, lifting, breaking down freight and cargo, and the stress created by a position that demands results, yet will not tolerate delays, all underscore the need for a young and vigorous work force. In addition, the fear that we are potential targets, the visible front line for the often mentioned narcotics and terrorist threat, also has a debilitating effect on the Customs inspector. As a result of these demands, it is my opinion that 20 years from now it will be nearly impossible for me to be as productive as I am today.

As we enter the new century, who will comprise the young and vigorous work force that I will be training? This committee has discussed the pay disparity between the Federal sector and other Government agencies and the private sector. A June 15 letter to OPM Director Constance Horner, signed by the heads of every law enforcement agency, including IRS and Customs, pleaded that something be done about the pay disparity between Federal law enforcement positions and local positions. The letter detailed the problems in recruiting and maintaining a quality work force around the country, especially in high cost-of-living areas like New York. At least most of the positions referred to in the letter were covered by a 20-year retirement. In New York, Customs not only competes with local departments that pay almost double the salary, they must attempt to attract law enforcement and client personnel without the retirement benefit. It is difficult now; it will be impossible in the future.

Pay disparity is a larger issue, but H.R. 2532 is a tangible and immediate method to ensure that our Nation's borders are patrolled by quality, qualified human beings.

I can speak at length about the justification of this bill regarding the Customs inspector position. As a taxpayer, I hope that you will recognize that passage would represent sound management of government resources.

Thank you.

Mr. ACKERMAN. Thank you, Mr. Fox.

Miss Smola.

STATEMENT OF JANICE J. SMOLA, PRESIDENT, NTEU CHAPTER 33, IRS, PHOENIX, AZ

Ms. SMOLA. I would like to thank the committee for giving me this opportunity to come here today to answer any questions with regard to the 20-year retirement for revenue officers.

As revenue officers, we constantly deal with delinquent taxpayers, either in the office, on the telephone, or out in the field. We never know how a taxpayer may react or what frame of mind a taxpayer may be in. The stress level of a revenue officer is always high because of the danger of being threatened or assaulted every time he or she meets with taxpayers. For example, I know of a revenue officer who was subjected to an illegal citizens arrest by a tax protester and held in the protester's office for over an hour. There also was a revenue officer who was threatened because of a gun lying on the taxpayer's desk.

In Arizona, a person can legally carry a gun as long as it is exposed. In New Mexico recently, two revenue officers were assaulted by a taxpayer. I understand that in June the taxpayer was indicted for assault by a grand jury.

I know revenue officers who are frequently under a doctor's care for high blood pressure, ulcers and whatever because of the very high stress level of the job. We recently had a revenue officer who retired on disability because of the stress he was enduring and died three months later from a heart attack.

I have been with the Service for 24 years and a revenue officer for 13. In those 13 years, I have been threatened, have had police escorts as well as our own internal security accompany me while conducting business out in the field.

I look forward to answering any questions from the committee. Thank you.

Mr. ACKERMAN. Let me thank the three of you.

Let me begin with this question. What kind of law enforcement training do Revenue officers and Customs inspectors receive?

Ms. SMOLA. Revenue officers do not get any type of law enforcement training. What they do get is training when they first come on board and at various times during their continuing professional education, what is called assault and threat training.

Mr. FOX. Customs inspectors go through a nine-week course in Glenco, GA at the Federal Law Enforcement Training Center, of which a significant part is direct law enforcement training.

Mr. ACKERMAN. A significant part. The overall training is nine weeks?

Mr. FOX. The overall training is nine weeks. Probably seven to eight of it is. The other thing is firearms training, physical fitness training.

Mr. ACKERMAN. Could you please give me that number again?

Mr. FOX. Nine weeks training at the Federal Law Enforcement Training Center, of which seven to eight weeks is direct law enforcement training.

Mr. ACKERMAN. Seven to eight out of the nine is direct law enforcement.

Mr. FOX. Right.

Mr. ACKERMAN. And that's the total training that you receive?

Mr. FOX. That's the training before you come on the job. Then you're constantly given other training, courses and updates on regulations, courses in cargo processing laws and regulations, trade updates, after you have started as an inspector.

Mr. ACKERMAN. How long is that training?

Mr. Fox. It's ongoing. You average probably two to three weeks of training a year.

Mr. ACKERMAN. But the first training you get is law enforcement?

Mr. Fox. Law enforcement for nine weeks.

Mr. ACKERMAN. According to the IRS, its revenue officers have—and I will quote—"the most hazardous positions in the entire Department of Treasury." That's the quote. I also understand that from 1981 through 1984, assaults on revenue officers increased by nearly 200 percent.

Could you update us? Has that increased since 1984, is it getting worse or getting better?

Mr. SMITH. I believe, Mr. Chairman, that it has been getting worse. In the study that was done in '85, I believe we have some figures here in the record which show it's getting worse. I think the IRS just completed a study last year which shows that it's continuing to increase. That certainly has been our experience in talking to our members in the field.

Mr. ACKERMAN. I would like to ask Mr. Fox, in your work at JFK Airport, I understand that you're finding recruitment and retention becoming increasingly more difficult. Can you elaborate on how serious that problem might be?

Mr. Fox. I think the problem is getting to a crisis level. Presently we have 27 open positions that we've had for at least four months. We started a new program where inspectors were transferred into a new section, which created 27 open positions at the airport. To my knowledge, they have only filled six to seven of them at this point. The area director of JFK Airport tells me that when they call up and ask about the starting salary and benefits, there is no followup.

Also, as the previous gentleman said, going into other areas, there are a lot of inspectors now going into the program analyst positions, various other positions, just because there's no benefit in staying on the front line as an inspector. You're getting the same retirement benefits by working in the office, the operations analyst staff, things of that nature.

Mr. ACKERMAN. I suppose we missed a trick and could have had John Q. Citizen testify as to how long a wait it is to get up to the Customs official when you do come into Kennedy Airport, and I presume the same is true of many of our other airports when coming in from overseas.

Mr. Fox. A lack of staffing.

Mr. SMITH. I believe, Mr. Chairman, as you're probably very familiar with Nassau County, I believe the starting salary in Nassau County for a police officer is somewhere in the range of $29,000. I believe the starting salary for a Customs inspector is about what, 16?

Mr. Fox. Yes, $16,000.

Mr. SMITH. So that's why right off the bat they're having a next to impossible job of filling those openings.

Mr. ACKERMAN. Thank you.

Mrs. Morella.

Mrs. MORELLA. It seems to me that you could have an incredible case if you could do a comparative analysis of the number of prob-

lems in terms of threats, I if there could be an authentication of that—compared to other law enforcement officers, to demonstrate that you are in as great a danger, if not more, than those that you want to be on a level with.

I'm also curious about whether or not there's been any look at how many people in each of your areas would be eligible for the retirement if this bill were to become law. In other words, would there be an upheaval? What numbers are we really talking about?

Mr. SMITH. I believe Congressman Swift, who introduced the bill, as asked CBO for such a study. But my information from the projections that the IRS has done on their own indicates there would be—I don't know the exact figures—but there would be a significant group in the first year. However, they project that over a five-year period there would be large savings associated with the program because, once people knew there was this benefit, we wouldn't be losing people after about the seven, eight, nine, ten year area. Thus, we wouldn't have to retrain so many new people. And those people that we would keep on from the ten to twenty year period are thus older and more experienced and have been shown to collect more revenue than the newer, untrained people.

Mrs. MORELLA. That would also be another interesting point, to indicate we are losing such a percentage of people after seven years, or whatever it happens to be.

Mr. SMITH. I'm sure we can supply the committee with all those types of statistics.

Mrs. MORELLA. Is there an educational requisite in terms of a background for each of those jobs, the Customs inspector and the IRS revenue officer?

Mr. FOX. For Customs inspector, it requires a bachelor's degree to come in from the outside.

Mrs. MORELLA. And for revenue officers?

Ms. SMOLA. For a revenue officer, it now requires a 3.5 average in college.

Mrs. MORELLA. So it does require a degree also.

How much of the day is spent with paperwork versus on the "line of fire", if that's an expression I can use? I'm thinking, for instance, of a revenue officer. How much time is spent actually in confrontation, trying to seize the property or whatever, versus that time which may be spent in an office with nonthreatening duties?

Ms. SMOLA. I would say around 85 to 90 percent is out in the field talking with the taxpayers.

Mrs. MORELLA. How about the rest of you? Do you want to comment on that?

Mr. FOX. The inspectors, if you're in passenger processing, it's 100 percent of the time. If you're in the cargo area—well, we have new systems coming in. But if you're in the cargo area, you're doing paperwork processing and dealing with the importing community, truckers, container station operators, bonded freight owners.

Mrs. MORELLA. Do revenue officers carry weapons?

Ms. SMOLA. No, we do not.

Mrs. MORELLA. Should you?

Ms. SMOLA. Yes and no. I think the answer is yes and no.

Mrs. MORELLA. The answer is you do not, is that correct? And you mentioned you don't really have the training for it anyway.

Ms. SMOLA. That's correct.

Mr. SMITH. Congresswoman, what happens in the revenue officer case, when a revenue officer feels that they are potentially in a dangerous situation, they request assistance from the inspection service, who is armed and does at times accompany them.

Mrs. MORELLA. Thank you.

Thank you, Mr. Chairman.

Mr. ACKERMAN. Thank you very much.

I would just make one request. Mr. Fox, you mentioned a June 15th letter. If you would be kind enough to send us a copy of that, we would appreciate receiving it.

Thank you very much.

Our next witness will be Mr. Sebastian Russo, the National President, Federation of Postal Police Officers.

Welcome, Mr. Russo. If you would be so kind as to introduce us to Mr. Brock, we would appreciate it.

STATEMENT OF SEBASTIAN RUSSO, NATIONAL PRESIDENT, FEDERATION OF POSTAL POLICE OFFICERS, ACCOMPANIED BY WILLIAM BROCK, NATIONAL VICE PRESIDENT

Mr. RUSSO. This is Mr. Willie Brock, National Vice President of the Federation of Postal Police Officers. My name is Sebastian Russo, National President. I reside in New York City and Mr. Brock resides in St. Louis, MO.

I would like to take this opportunity to thank you, Mr. Chairman, and your committee to allow us time to show you why we should be placed under this bill, H.R. 2532. We have a written statement that we would like to have placed in the record, if we may.

Mr. ACKERMAN. Without objection, your entire prepared testimony is part of the record.

Mr. RUSSO. Thank you.

Postal Police officers are the uniformed service of the U.S. Postal Inspection Service. It was organized back in 1970 under the U.S. Postal Reorganization Act. We have the powers of arrest given to us by the U.S. Congress. Our duties are the protection of postal property owned and leased, the protection of customers, patrons, and workers on postal property.

We are armed officers. We respond to burglaries of postal facilities, plus any incidents that occur at these facilities. We go to school at Bethesda, MD for a period of four weeks, the U.S. Postal Inspection Service school. We qualify twice a year for firearms. If we do not qualify with these firearms, we no longer have a job, or we are placed back into the Postal Service. We have ongoing training as far as law enforcement, search and seizures, handcuffing, baton training, crowd control, bomb control. We go through all kind of procedures.

We are under the $50,000 death benefit bill. We are the front line of the U.S. Postal Inspection Service. When we had the wildcat strike back in the late seventies in Newark, NJ, the bulk center,

we were the main line out in front controlling the ongoing incident there.

At this time I would like to turn the microphone over to Mr. Willie Brock.

[The statement of Sebastian Russo follows:]

Testimony of Mr. Sebastian Russo, National President,
Federation of Postal Police Officers

My name is Sebastian Russo. I am the National President of the Federation of Postal Police Officers and with me today is Mr. Willaim Brock, the National Vice-President of the Federation. We are very grateful to the subcommittee for this opportunity to testify on HR 2532. In my remarks, I would like to acquaint the subcommittee with the Federation of Postal Police Officers and explain why we think we should be included in HR 2532.

I. HISTORY OF POSTAL POLICE OFFICERS

In the early 1970's, Congress created a uniformed, armed police force in order to provide protection to both postal facilities and federal court houses. Because these facilities were frequently in the same location, the Postal Service and its subsidiary, the Postal Inspection Service, became responsible for this mission and employed postal police officers to achieve these goals.

Postal police officers are found throughout the United States. Prior to coming into service, we receive extensive training. We are uniformed, we carry firearms, have arrest powers and are often required to become involved in both highly sensitive and sometimes dangerous tasks.

A review of Justice Department statistics reveals, for example, that in certain years we have been involved in more assault cases than either postal inspectors or U.S. marshalls.

Our brother and sister officers are also quite visible. If you visit any major facility you will almost certainly encounter a postal police officer. Moreover, in addition to our police duties, we are expected to deal with the public and to make sure that postal regulations and other applicable federal laws are obeyed.

Because we carry firearms, our training never stops. Twice each year, we must re-qualify in firmarms proficiency and, as will be explained later, this has caused some problems for some of our more senior officers.

Over the years, our numbers have decreased. At one time, approximately two thousand (2,000) postal police officers existed. Today, that number has fallen to about sixteen hundred (1,600).

As our numbers have fallen, the Postal Service has absorbed excess officers. In other words, due to collective bargaining obligations, the Postal Service either transfers excess officers to other parts of the country or, more typically, puts these unneeded officers into non-bargaining unit positions and guarantees their higher rate of pay. In either case, a great deal of expense, including moving costs, are incurred.

Postal police officers, on a nationwide basis, can join a single union, the Federation of Postal Police Officers. Over the years the Federation has won bargaining rights in each division of the Postal Service and, as of today, all other unions which formerly represented postal police officers have become inactive due to the Federation's successful organizing efforts. Although not required to belong, the vast majority of postal police officers are dues paying members of the Federation.

For pension purposes, postal police officers are treated as regular, non-law enforcement federal employees. That is, we are not treated as law enforcement officers by either the Postal Service or the Office of Personnel Management. In large measure, this is justified on the basis of the rather narrow definition of law enforcement officer as contained in current legislation.

Interestingly enough, the Postal Service, in all other ways, views us as law enforcement officers. For example, for purposes of job related death benefits, we are viewed as law enforcement officers. Perhaps even more significant is the fact that the Postal Service, in numerous arbitration proceedings, has taken the positions that postal officers are law enforcement personnel who must adhere to a much higher standard of conduct than more typical Postal Service employees.

II. THE NEED FOR LEGISLATIVE CHANGE

Under current pension legislation, the term "law enforcement" officer is quite narrowly defined and has been narrowly construed by the courts. As a result, postal police officers have been effectively denied early retirement benefits. We believe that, for the following reasons, change is needed:

A) We are declining in numbers. Assuming that this trend continues, the early retirement aspect of law enforcement status will, through more normal attrition methods, accommodate this decline. Thus, rather than use the rather costly and inefficient Postal Service method of absorbing excess officers, early retirement, commonly used in private industry, would accomplish the same result but on a more cost effective and mutually satisfactory basis.

B) The cost of granting law enforcement status to postal police officers is small. Although slightly increased employer and employee contributions would be required, these increases would be minimal. As to the Postal Service, the cost when spread out over a number of years is miniscule, especially when we consider that no postal police officer could take early retirement - achieve 20 years of law enforcement - until the 1990's.

C) It is fundamentally fair to include postal police officers as law enforcement officers. Current law, as restrictive as it is, denies us the benefit of this status while, at the same time, we are expected to behave like, perform like and look like police officers with all the risks and duties that that entails.

D) The early retirement features of law enforcement status will assist our more senior officers. As we get older, our proficiency with firearms decreases with many of us. Yet if we fail our semi-annual firearms qualification test, we will lose our jobs as postal police officers. This hardly seems a fitting end to a long and loyal career. By granting law enforcement status, our more senior officers will not have to face this rather unsavory prospect.

E) Because our jobs are potentially dangerous and physically demanding, the early retirement features of law enforcement will offer a cost effective way of minimizing future compensation costs.

III. SUMMARY

For all of these reasons, we seek help from Congress. If for pension purposes, postal police officers were included within the definition of law enforcement personnel, an effective, fair and humane change will have occurred.

Appendix A: Postal Service
Holds Postal Police Officers to Law
Enforcement Standard in Arbitration Cases

The Postal Service has always said that Postal Police Officers were law enforcement officers when the conduct of an officer was an issue in arbitration. Two recent examples illustrate this point.

In Re: David Consolotti,
February 3, 1988
Brief for the Postal Service
Page 10

"Postal Police Officers wear uniforms, they have a badge, they carry a firearm, they enforce federal laws and postal regulations....We consider that the Postal Police Officers are held to an even higher standard than regular Postal employees because they are law enforcement officers."

In Re: Barry Hentz,
May 14, 1987
Brief for the Postal Service
Page 9 & Page 11

"The grievant Bill Hentz was a Postal Police Officer assigned to duties at the St. Louis Postal Office. His duties included the enforcement of all laws, including postal regulations, enacted for the protection of persons and property, including thefts occurring at Postal Services controlled property....Although all Postal Employees occupy positions of public trust, Postal Police Officers are charged to an even greater degree with that element of trust. When a Postal Police Officer violates any rule or regulation of the Postal Service, it is a particularly telling error, considering the fact that a Postal Police Officer is entrusted with the obligation and authority to enforce the very rules being violated."

These cases illustrate two points.

First, the Postal Service expects service and conduct from Postal Police Officers commensurate with their status as the uniformed branch of the Postal Inspection Service. But Postal Police Officers retirement is not similar to the rest of the Postal Inspection Service. Instead it is the same as the retirement for other Postal employees who are not part of the Inspection Service. Clearly the duties of Postal Police Officers are much more closely related to those of non-uniformed Postal Inspectors than they are to those of other Postal employees, a fact which the Postal Service has vigorously noted in arbitration.

Second, the administration should not be permitted to argue in one forum, arbitration cases, that Postal Police Officers are law enforcement officers and then argue in another forum, Congress, that they are not.

Appendix B: Examples of Hazards Faced by Postal Police Officers

Postal Police Officers (PPO's) face a surprisingly large number of dangerous situations in the line of duty. Although they are less numerous than other federal officers, PPO's endure more than their share of assaults, and they are necessarily involved in firearms situations far more often than one would think from a casual visit to the Post Office. In addition, as correspondence included for this hearing illustrates, extremely violent incidents have occurred at facilities not protected by PPO's, such as the tragedy in Edmon, Oklahoma. This shows that PPO's may be required at more facilities and that their dangers would not decrease if their mission were expanded to cover more facilities.

Background: Assaults on PPO's

Postal Police Officers endure just as many assaults, and often more, in an average year than are experienced by the more numerous Postal Inspectors who are accorded law enforcement status under current OPM policy. Assaults on Postal Police Officers are just as numerous as those on Customs agents and INS agents, both of which groups are included in H.R. 2532 as introduced.

The following table shows the figures for several groups of federal officers for the last three years for which FBI figures are complete.

Assaults on Federal Officers

	1984	1985	1986	Approx. No. of Officers
Postal Inspectors	1	5	5	2,000
Postal Police	11	5	21	1,600
Customs Service	3	15	4	4,800
INS Agents	14	21	31	*
US Marshals	4	7	4	*

Source: FBI

* Agency personnel have not responded to inquiries on this matter.

The Postal Police Officers suffer just as many assaults as comparable federal officers who either receive law enforcement retirement treatment under current law or who would receive it if H.R. 2532 were enacted. In fact, Postal Police Officers are fewer in numbers than the others compared and are therefore proportionally more likely to be assaulted.

Recent Serious Incidents

As is the case with other federal officers, most assailants of PPO's are not heavily armed, but the exceptions are all too frequent. The following cases were compiled despite the refusal to cooperate with the Federation by Postal Service authorities in New York City, where the highest percentage of serious incidents occur.

As recently as May, 1988 a Postal Police Officer was shot and wounded by an assailant who was in turn shot and wounded by another PPO who arrested him and confiscated the weapon. The gunman had begun shooting at approximately 50 customers and employees in his vicinity in a crowded Seattle post office.

In January, 1988 a fugitive murderer entered Post Office property in New Orleans and shot a postal customer who refused to give him her car. Postal Police pursued and apprehended the suspect in a nearby train station.

In the autumn of 1987 in New York City, a PPO shot and wounded an assailant who had attacked him with a knife.

In Boston, in late 1987 two PPO's were attacked by a man who drove his car at them.

Handgun assailants were successfully arrested without shots being fired by PPO's in Baltimore and San Francisco in mid-1987. Postal Police Officers in Chicago successfully confiscated 20 guns and knives in 1987.

Many other incidents have occurred in recent years and it should be pointed out that 1987 and 1988 have not been the most violent years for Postal Police Officers. That "distinction" goes to 1981.

In August, 1981 two PPO's were shot at and one wounded in Brooklyn. In November, 1981 a gunman who had repeatedly and fatally shot a female postal supervisor in New Orleans shot and wounded a PPO in the head. The gunman was, in turn, wounded by the PPO and later was arrested at a local hospital.

Worst of all, in June, 1981 a PPO in Chicago was murdered by three assailants who shot him repeatedly at close range.

And, as the tragic mass shooting at the post office in Edmon, Oklahoma indicates, serious dangers are not confined to a few urban postal facilities. PPO's everywhere are at risk and facilities not guarded by PPO's are also at risk.

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Mr. ACKERMAN. Thank you very much.
Mr. Brock.

STATEMENT OF WILLIAM BROCK

Mr. BROCK. Thank you, sir, for inviting us here.

I would like to cite several incidents where Postal Police officers have been involved in very violent situations.

You might have read in the newspaper that on May 3rd of this year an irate employee at Seattle, Washington's main post office entered the post office and got into an argument with the postal clerk. This customer pulled out a firearm and started firing at the clerk and also at the customers. The Postal Police officer there responded and was wounded in the right arm by the customer. The Postal Police officer fired six rounds, wounding that individual, handcuffed him and arrested him.

In January of this year, in New Orleans, a postal customer ran into the post office after he had shot and killed an individual in the city of New Orleans. The customer tried to hijack a vehicle from one of the postal customers. The lady refused to give him her vehicle. That individual shot the postal customer and ran across the street to a train station. The Postal Police officers chased the individual and arrested him and that individual was indicted.

I would like to say, sir, under the current Office of Personnel Management definition of a law enforcement officer, there isn't any city police department, uniformed police officer in any city, who would qualify because of the requirement that 51 percent of your duties are supposed to be investigation. As a Postal Police officer, we are law enforcement officers, and when we are disciplined by management for different activities that some of our members get involved in, we are always referred to as law enforcement officers. But for the purpose of the 20-year retirement bill, we are not referred to as law enforcement officers. We are treated as any other postal employee.

Now, we are involved in very hazardous duty, very stressful duty. Our officers are threatened. We have been assaulted with firearms, with knives, even axes, hatchets, things of that nature. So we believe that H.R. 2532 should include Postal Police officers because of the nature of our duties.

Mr. ACKERMAN. It seems to me what you're describing is that you're law enforcement officers for the purpose of work but not for the purpose of retirement.

Mr. BROCK. Yes, sir.

Mr. ACKERMAN. One of the things that you told us, Mr. Russo, was that you are required to be tested twice a year for the use of firearms?

Mr. RUSSO. Twice a year we must requalify. When we finish school in Bethesda, we must requalify on our firearms twice a year, every six months.

Mr. ACKERMAN. And if you don't pass that, you're off the job?

Mr. RUSSO. We're off that job. We possibly could get back into the Postal Service and work as a clerk, carrier, and so forth, yes. But we will lose our job as a Postal Police officer, yes, if we do not qualify.

Mr. ACKERMAN. I may be naive, but I assume the carrying of a gun has something to do with law enforcement. If you do not qualify for the expertise needed to use that gun two times a year, you lose that job.

Mr. RUSSO. As a Postal Police officer, yes.

Mr. ACKERMAN. As a Postal Police officer.

Is there any other test that you're given twice a year by which if you fail you're off the job?

Mr. RUSSO. No.

Mr. ACKERMAN. Or once a year you're off the job, or once every two years you're off the job? That's the sole and only test that you can be thrown off your job if you don't qualify?

Mr. RUSSO. Disciplinary actions would be the other reason.

Mr. ACKERMAN. Well, aside from that.

That would seem to indicate that that's not only a primary but a rather unique responsibility.

Mr. RUSSO. We have a unique job.

Mr. ACKERMAN. You have a rather unique job. From my understanding of the language, semantics aside, or even considering semantics, that would be considered a primary responsibility if that onus is upon you.

How many postal policemen are there—policepersons, excuse me.

Mr. RUSSO. About 1,400. We started with about 2,000. That's one of the reasons why we would like to get under this 20-year retirement. As an individual gets older—I'm 55 years old and I cannot, say, shoot from the hip as good as when I was 20. So this is one of the main reasons for getting on this bill, because we have such strenuous ways of contending with the job.

We must familiarize ourselves with shotguns, too, twice a year. We don't have to qualify with a shotgun, but we have to know how to shoot a shotgun and how it operates, so on and so forth. We do take shotguns with us when we go out on burglary responses and on escorts. I go to and from postal facilities and from the airports.

Mr. ACKERMAN. What are your secondary responsibilities, outside of law enforcement?

Mr. RUSSO. Protection of postal property.

Mr. ACKERMAN. That's law enforcement, isn't it?

Mr. RUSSO. Yes.

Mr. BROCK. All of our duties are law enforcement.

Mr. RUSSO. I would say all of our duties are law enforcement.

Mr. ACKERMAN. If all of your duties are law enforcement, that seems pretty primary.

I can't think of anything else to ask you. I think you made a pretty complete case. Thank you very much.

Mr. RUSSO. You're welcome.

Mr. BROCK. Thank you for having us, sir.

Mr. ACKERMAN. Our next witness is Mr. Neal Marchbanks, Chairman, Legislative Committee, National Weather Service Employees Organization. Welcome to the subcommittee. We have your complete statement. If you would care to summarize it or make comments, just proceed as you wish.

STATEMENT OF NEAL MARCHBANKS, CHAIRMAN, LEGISLATIVE COMMITTEE, NATIONAL WEATHER SERVICE EMPLOYEES ORGANIZATION

Mr. MARCHBANKS. I will summarize it somewhat, sir, in the interest of time.

I am the Chairman of the Legislative Committee of the National Weather Service Employees Organization. I'm a meteorologist, the Fire Weather Focal Point, at the Anchorage forecast office. Our organization is a union which represents employees of the National Weather Service, NWS, and the National Environmental Satellite Data and Information Service, NESDIS.

Public Law 99-335 established early retirement for several special classes of Federal employees. The early retirement provision was created and passed by Congress in recognition of the fact that stresses posed by some occupations may shorten life expectancy. We believe that National Weather Service and NESDIS employees, working rotating shifts, should be included in this category.

The employees of the NWS and NESDIS are subject to acute stress resulting from hazardous and often life-threatening weather events. As you know, the National Weather Service is responsible for issuing warnings during such weather events as tornadoes, flash floods, and hurricanes. These weather events involve life and death decisions which must be made quickly in order for the public to have time to protect themselves. These decisions may have great economic impact upon large numbers of people, especially when they lead to the evacuation of populated areas. The National Weather Service provides observations and forecasts to support aviation safety for the flying public. Fire Weather Forecasters provide on-site weather forecasts at the scene of forest fires. All these responsibilities subjects the employees to acute stress.

However, NWS and NESDIS employees are also exposed to prolonged chronic stress. In order to maintain a 24-hour daily weather watch ensuring public safety, we must work rotating shifts. Rotating shift work is different than normal shift work in that the shifts are worked—day, evening, and night—are constantly changing. Every NWS shift worker is exposed to a lifetime of shift work, no matter how much seniority he or she may have.

Rotating shifts produce physiological and psychological symptoms typical of jet lag. In fact, it is realistic to equate the demands of frequent shift change to a perpetual jet lag. With each change in rotation you struggle to adapt, only to find it is time to change shifts again. Whereas jet lag affects only the traveler, rotating shift work affects the entire family. The rotating shift worker is out of synch with the rest of the family. Their Saturday may be his Monday, their breakfast is often his dinner, his time to sleep is their time to work and play. Often the entire family may become tense as they attempt to carry on normal activities while trying not to wake mom or dad.

There are striking similarities between the structure and demands of the NWS and NESDIS operational environment and the classical experimental settings designed by researchers to produce stress and study its effects. First of all, these employees are subject

to circumstances similar to settings which evaluate frustration tolerance produced by frequent distractions and interruptions.

The NWS forecasters job is structured around the element of time. Throughout the shift, the forecaster races the clock to produce his forecasts, whether it be the various aviation forecast products, public, fire weather, marine, or extended forecasts. All of these are original products produced while responding to frequent visual and audio alarms and alerts from various computers that demand immediate attention, or the interruptions from the many phone calls from the media, government, private decision-makers, or from other forecasters in adjacent offices calling for forecast coordination. The nature of the job is "beat the clock" and do it despite many distractions and interruptions.

In a second type of controlled research setting designed to test so-called cognitive dissonance, stress has often been produced by presenting multiple and conflicting pieces of information which must be responded to successfully to complete the assigned task. Cognitive dissonance is routine and occurs every day in every office in the NWS and NESDIS operations. There is always conflicting forecast guidance from the several computer models of the atmosphere. Two numerical forecast models may call for snow, while a third predicts rain, and yet a fourth calls for freezing rain. It is the forecaster who must resolve the differences under the duress of time deadlines, distractions and interruptions.

A third type of controlled research setting designed to test tolerance for ambiguity, stress has often been produced by presenting an overload of information too large to digest and/or by withholding key pieces of information.

In the modern NWS or NESDIS office, there has been an explosion of data with too little time and too few personnel to digest it. At other times, the forecaster finds critical pieces of data not available, such data being crucial to making the best forecast. Regardless of the facts, too much or too little data, the forecaster still must make the crucial decisions to meet the ever-present deadlines.

The stress caused by rotating shift work, together with meeting strict deadlines and being responsible for the safety of large population groups during severe weather, also serves to shorten employee life expectancy.

The NWSEO urges this subcommittee to add to early retirement legislation provisions similar to those in H.R. 1948, as passed by the U.S. Senate on December 21, 1987. Mr. Chairman, I would like your permission to submit NWSEO's recommended bill for your consideration in the record.

Mr. ACKERMAN. Without objection.

Mr. MARCHBANKS. H.R. 1948, as amended and passed by the Senate, included an amendment sponsored by Senator Jim Sasser, which redefined, for early retirement purposes, air traffic controller to include NWS and NESDIS employees.

Mr. Chairman, I would also like your permission to submit a copy of the Senate floor consideration of H.R. 1948 in the record.

Mr. ACKERMAN. I don't think there is a need to keep the Senate records from the Congressional Record on file, but we'll take due note of it.

Mr. MARCHBANKS. NWS and NESDIS employees are engaged in work similar in many respects to that of flight service specialists and, therefore, it is only fair that NWS and NESDIS be allowed to opt for early retirement as well. In fact, flight service specialists act only as a conduit for forecasts which are written by NWS employees, and the flight service specialists often must refer the pilots to us when the briefing becomes complicated. In addition, NWS employees work along with flight service specialists in search and rescue efforts, all of which are multiagency actions.

The NWSEO estimates that only 3,000 NWS and NESDIS employees would be affected by our proposed early retirement legislation over the next 25 years. This would produce approximately an average of 120 employees that would be affected each year, not counting an initial year number of about 300 employees who could take advantage of the proposed law.

National Weather Service forecasters must cope with the cumulative stress produced by not only rotating shifts and acute stress of life-threatening weather conditions, but also the chronic and prolonged stress inherent in the job demands and work environment. The early retirement provision should be expanded to include NWS and NESDIS personnel. We urge the subcommittee to consider and include our suggested legislation in the bill, H.R. 2532, you are now considering.

I thank you again for your allowing me to come here today and I would be glad to answer any questions, sir.

[The statement of Neal Marchbanks follows:]

STATEMENT OF

NEAL MARCHBANKS, CHAIRMAN LEGISLATIVE COMMITTEE

NATIONAL WEATHER SERVICE EMPLOYEES ORGANIZATION

BEFORE THE

HOUSE SUBCOMMITTEE ON COMPENSATION AND

EMPLOYEE BENEFITS

OF THE

HOUSE COMMITTEE ON POST OFFICE AND CIVIL SERVICE

ON

JULY 13, 1988

Mr. Chairman and members of the subcommittee, my name is Neal Marchbanks and I am the Legislative Chairman of the National Weather Service Employees Organization. I am a forecaster in the Anchorage, Alaska Weather Service Forecast Office.

Our organization is a union which represents employees of the National Weather Service (NWS) and the National Environmental Satellite Data and Information Service (NESDIS), both within the National Oceanic and Atmospheric Administration (NOAA). Our members have a strong interest in early retirement and wish to commend this subcommittee for holding this hearing today.

On June 6, 1986 the President signed Public Law 99-335, the Federal Employees Retirement System Act, which took effect on January 1, 1987. P.L. 99-335 established earlier retirement for several special classes of federal employees, including law enforcement personnel, fire fighters, flight service specialists,

and air traffic controllers. All of these employees may retire with an unreduced benefit at age 50 with at least 20 years of service, or at any age with at least 25 years of service.

Mr. Chairman, I am sure you and the members of this subcommittee know that the early retirement provision was created and passed by Congress in recognition of the fact that the stresses posed by some occupations may shorten life expectancy, and maintaining a younger work force is preferable. We believe that NWS and NESDIS employees, working rotating shifts, should be included in this category.

The employees of the NWS and NESDIS are subject to acute stress resulting from hazardous and often life-threatening weather events. As you know, the NWS is responsible for issuing warnings during such weather events as tornadoes, flash floods, and hurricanes. These weather events involve life and death decisions, which must be made quickly in order for the public to have time to protect themselves. These decisions may have great economic impact upon large numbers of people, especially when they lead to the evacuation of populated areas. The NWS provides observations and forecasts to support aviation safety for the flying public. Fire Weather Forecasters provide on-site weather forecasts at the scene of forest fires. All these responsibilities subjects the employees to acute stress.

However, NWS and NESDIS employees are exposed to prolonged chronic stress. In order to maintain a 24-hour daily weather watch ensuring public safety, the NWS and the NESDIS employees

must work rotating shifts. Rotating shift work is different than normal shift work in that the shifts that are worked (day, evening, night) are constantly changing. The NWS instituted the rotating shift practice so that each employee would have an equivalent amount of evening and night work. Therefore, every NWS shift worker is exposed to a lifetime of shift work no matter how much seniority he or she may have.

Rotating shifts produce physiological and psychological symptoms typical of jet lag. In fact, it is realistic to equate the demands of frequent shift change to a perpetual jet lag. With each change in rotation you struggle to adapt only to find it is time to change shifts again. But jet lag only affects the traveler. Rotating shifts affects the entire family. The rotating shift worker is out of synch with the rest of the family. Their Saturday may be his Monday, their breakfast is often his dinner, his time to sleep is their time to work and play. Often the entire family becomes tense as they attempt to carry on normal activities while trying not to wake dad or mom from getting enough sleep.

Simply put, health effects of rotating shifts are negative. Lab rodents show up to 10% reduction in lifespand by simply flipflopping light schedules. Studies at a Swedish paper mill show the risk of having heart attacks increased in proportion to the number of years on nights. Shift workers sleep less than their day shift counterparts. A survey of more than a million Americans by the American Cancer Society, found people who routinely sleep fewer than six hours were more likely to die from

heart disease and stroke than those who sleep seven to nine hours.

There are striking similarities between the structure and demands of the NWS and NESDIS operational environment and the classical experimental settings designed by researchers to produce stress and study its effects.

First of all, these employees are subject to circumstances similar to settings which evaluate frustration tolerance. A common setting for researchers is to present subjects with time deadlines and gauge their reaction to stress and frustration produced by frequent distractions and interruptions.

The NWS forecasters job is structured around the element of time. Throughout the shift, the forecaster races the clock to produce his forecasts, whether it be the various aviation forecast products, public, fire weather, marine, or extended forecasts. All of these are original products produced while responding to frequent visual and aural alarms and alerts from various computers that demand immediate attention, or the interruptions from the many phone calls from the media, government or private decision-makers, or from forecasts in adjacent offices calling for forecast coordination. The nature of the job is "beat the clock" and do it despite the many distractions and interruptions to the forecaster's primary mission -- that of producing the forecasts.

In a second type of controlled research setting designed to test so called "Cognitive dissonance", stress has often been

produced by presenting multiple and conflicting pieces of information which must be resolved to successfully complete the assigned task. Cognitive dissonance is routine and occurs every day in every office in NWS and NESDIS operations. There are always conflicting forecast guidance from the several computer models of the atmosphere. Two numerical forecast models may call for snow while a third predicts rain and yet a fourth calls for freezing rain. It is the forecaster who must resolve the differences under the duress of time deadlines, distractions and interruptions.

A third type of controlled research setting designed to test tolerance for ambiguity, stress has often been produced by presenting an overload of information too large to digest and/or by withholding key pieces of information necessary for task completion.

In the modern NSW or NESDIS office, there has been an explosion of data with too little time and too few personnel to digest it. At other times, the forecaster finds critical pieces of data not available, such data being crucial to making the best forecast. Regardless of the facts, too much or too little data, the forecaster must make the crucial decisions to meet the ever present deadlines. Most often, these forecasts will not be of severe, life-threatening weather. However, properly worded forecasts without mention of severe life-threatening conditions are just as important as a forecast of all-out severe weather conditions, in maintaining creditability in the forecast products.

The stress caused by rotating shift work together with meeting strict deadlines and being responsible for the safety of large population groups during severe weather, also serves to shorten employees life expectancy.

The NWSEO urges this subcommittee to add to early retirement legislation reported out to the full committee and the full House of Representatives, provisions similar to H.R. 1948, as passed by the U.S. Senate on December 21, 1987. Attached to my statement is the NWSEO's recommended bill for your consideration.

This draft bill recognizes the right of NWS and NESDIS employees to become eligible for early retirement. H.R. 1948, as amended and passed by the Senate, included an amendment sponsored by Senator Jim Sasser (D-TN), a member of the Senate Federal Services, Post Office and Civil Services Subcommittee. The Sasser Amendment redefined, for early retirement purposes, "air traffic controller" to include NWS and NESDIS employees.

Mr. Chairman, the full Senate recognized the importance and vital contributions of NWS and NESDIS employees to the public safety of our citizens. We include a copy of the Senate floor consideration of H.R. 1948 at the end of this statement.

Flight service specialists who provide preflight, inflight, or airport weather advisory service to aircraft operators, are allowed to retire early according to Section 207(a)(A)(ii) of P.L. 99-335. The NWS and NESDIS employees are engaged in work similar in many respects to that of flight service specialists, and therefore it is only fair that NWS and NESDIS be allowed to

opt for early retirement as well. In fact, flight service specialists act only as a conduit for forecasts which are written by NWS employees, and the flight service specialists often must refer the pilots to NWS employees when the briefing becomes complicated. In addition, NWS employees work along with flight service specialists in search and rescue efforts (all of which are multi-agency actions).

The NOAA management has disseminated reports on Capitol Hill that point to the large number of NWS employees who might be affected by early retirement, and the claim is made that this large number may hamper the basic mission of the NWS. The NOAA management estimated that out of 4,700 NWS employees nationwide, 1,100 could retire immediately upon passage of early retirement, which would "cripple our warning and forecast operations." This is simply, not true.

The NWSEO estimates that only 3,000 NWS and NESDIS employees would be affected by our proposed early retirement legislation, over the next 25 years. This would produce an average of 120 employees that could be affected each year, not counting our initial year number of 300 employees who could take advantage of the proposed law.

In future reorganizations of the NWS and NESDIS, if any, early retirement options would help eliminate expenditures for relocation expenses and hardship on employees and their families due to reductions in force. Additionally, the NOAA "grade bulge

reduction" goals could be met by allowing earlier retirement options.

In summary, Mr. Chairman, our proposed legislation seeks to establish equitable treatment for NWS and NESDIS employees.

Few things affect so many people so often as does weather. The specific weather condition changes (tornadoes, floods, hail, drought, hurricanes, instrument flight conditions, heavy snow, freezing rain, extreme cold or heat) as does the decision-maker who needs the most accurate forecasts available (governor, police commissioner, pilot, fire fighter, and a myriad of government assistance agencies). The need to perform well is always there and professional NWS and NESDIS employees are keenly aware of the need to be accurate and the consequences of being wrong.

NWS forecasters must cope with the cumulative stress produced by not only rotating shifts and acute stress of life-threatening weather conditions, but also the chronic and prolonged stress inherent in the job demands and the work environment. The early retirement provision should be expanded to include NWS and NESDIS personnel. We urge the Congress to consider and pass our suggested legislation.

100th Congress
2nd Session

H.R._____

To amend title 5, United States Code, to include National Weather Service Employees and National Environmental Satellite, and Data Information Service (NESDIS) within the immediate retirement provisions applicable to certain employees engaged in hazardous occupations.

In the U.S. HOUSE OF REPRESENTATIVES

March, 1988

A BILL

To amend title 5, United States Code, to include National Weather Service Employees and National Environmental Satellite, and Data Information Service (NESDIS) within the immediate retirement provisions applicable to certain employees engaged in hazardous occupations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 8336(c)(1) of title 5, United States Code, is amended to read as follows:

"(c)(1) An employeee who is voluntarily or involuntarily separated from the service, except by removal for cause on charges of misconduct or delinquency after becoming fifty years of age and completing at least twenty years of service or after completing 25 years of service as a law enforcement officer, firefighter, National Weather Service,

or National Environmental Satellite, and Data Information Service (NESDIS) employee is entitled to an annuity."

(b) Section 8331 of title 5, United States Code, is amended by striking out "and" at the end of paragraph (21), by striking out the period at the end of paragraph (22) and inserting in lieu thereof the following new paragraphs:

"(23) 'National Weather Service' and 'National Environmental Satellite Data and Information Service (NESDIS)' employee means a civilian employee of the Department of Commerce who works rotating shifts in a National Weather Service or National Environmental Satellite Data and Information Service Facility-

(A) who is actively engaged in the gathering and/or processing of surface, upper air or satellite meterological data-

(i) assuring public safety by providing information to the general public as-

(a) severe weather warnings; or

(b) general weather forecasts; or

(ii) assuring aviation safety by providing information to-

(a) air traffic controllers or pilots; or

(b) aircraft operators in a pre-flight, in-flight, or airport advisory capacity; or

(B) who is the immediate supervisor of any employee described in subparagraph (A).

Sec. 2. The amendments made by the first section of this Act shall take effect on the date of enactment of this Act, and shall apply with respect to employees separated from the service on or after such date.

Mr. ACKERMAN. Thank you very much, Mr. Marchbanks.

Let me ask you this. You represent, what is it, 4,700 people?

Mr. MARCHBANKS. The entire agency has approximately 4,700 people.

Mr. ACKERMAN. Of the people you represent, do they all have to work rotating shifts?

Mr. MARCHBANKS. No, sir. Only a small portion, approximately 3,000 of the people would work rotating shifts. We also represent a lot of people such as oceanographers and hydrologists, some secretarial and administrative people, and some electronics technicians that do not work rotating shifts.

Mr. ACKERMAN. But about 3,000 do?

Mr. MARCHBANKS. Approximately 3,000, yes, sir.

Mr. ACKERMAN. Is it necessary that they work rotating shifts? Is there some reason they can't work more predictable hours?

Mr. MARCHBANKS. Years ago we did work straight shifts, and the people with the higher seniority were allowed to work days, and the people that just came into the system generally wound up on the midnight shift. This produced a big problem in holding these newer persons into the system. We were constantly losing the younger people. The rules were changed so that, no matter what the seniority, everyone worked the same amount of the night shifts.

To do that, we must maintain a 24-hour coverage at all airports 24 hours a day, and a lot of the severe weather occurs at midnight the same as it does during the day. To properly cover all seven days a week, 24 hours a day, and be equitable to the employees, that is necessary, yes, sir.

Mr. ACKERMAN. You mentioned that there are studies, including a recent one by Harvard Medical School, that indicates shift work is associated with physical ailments such as sleeping disorders, digestive problems and heart disease, and possibly shortened life expectancy.

Is there evidence of these problems in the Weather Service work force, or this is just the indications of the study in general?

Mr. MARCHBANKS. For instance, in our Anchorage office, in the past five years, we have had two people opt to transfer out to lower graded positions to get out of the shift work.

This deal about shift work and all is a relatively new science, so there are ongoing studies at this time. These studies have not been available for a long time. If you wanted more data, I could have the chairman of our Health and Safety Committee send you research that he has compiled.

Mr. ACKERMAN. We would appreciate that.

Mr. MARCHBANKS. I believe we already sent it to Congresswoman Morella's office. We talked with one of the staff people from her office and we did send that information to her, I believe. But I can certainly send it to you, too.

Mr. ACKERMAN. I would appreciate it.

But over and above that, have you made these studies available and called them to the attention of the National Weather Service?

Mr. MARCHBANKS. We have talked with some of the management at the National Weather Service, without a great deal of success.

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Mr. ACKERMAN. Have you given them the indications from this new science, as you call it?

Mr. MARCHBANKS. I have not done so, sir, but I believe we have had other people on the committee that have tried to give this data to them.

Mr. ACKERMAN. Thank you very much, and we thank you for your patience in being our final witness today.

The hearing is adjourned.

[Whereupon, at 2 p.m., the subcommittee adjourned.]

[The following statements and letters were received for the record:]

UNITED STATES POSTAL SERVICE
Law Department
475 L'Enfant Plaza, SW
Washington, DC 20260-1100

August 12, 1988

Honorable Gary L. Ackerman
Chairman, Subcommittee on Compensation
and Employee Benefits
Committee on Post Office and
Civil Service
House of Representatives
Washington, D.C. 20515-6247

Dear Congressman Ackerman:

This in response to your June 16 request for the views of the Postal Service on a proposal to include the position of postal police officer in H.R. 2532, so as to grant those employees the retirement benefits applicable to law enforcement officers under 5 U.S.C. 8336(c)(1).

Section 8336(c)(1) provides a special retirement benefit to "an employee who is separated from the service after becoming 50 years of age and completing 20 years of service as a law enforcement officer or firefighter, or any combination of such service totaling at least 20 years ...." Section 8331(20) defines a law enforcement officer as:

> An employee, the duties of whose position are primarily the investigation, apprehension or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position.

As delineated in 5 CFR 831.903(a), the definition of a law enforcement officer

> ...does not include an employee in a position the primary and regular duties of which involve maintaining law and order, protecting life and property, guarding against or inspecting for violations of law, or investigating persons other than persons who are suspected of violating the criminal laws of the United States, or whose duties only occasionally or incidentally require the investigation, apprehension, or detention of persons suspected or convicted of violating the criminal laws of the United States.

Postal police officers are uniformed members of the U.S. Postal Security Force (hereinafter Security Force), whose primary duties are to protect persons, mail and property; to prevent breaches of the peace; and to enforce the rules and regulations governing conduct on postal property at designated facilities. The Security Force was created by the Postal Service and assigned to the Inspection Service in the 1970's because of the lack of uniformity and training of the predecessor guard/watchman program. The purpose of the Security Force is to perform a guard function; it is not, and was never intended to be, an investigative or police force.

The authority to appoint and utilize the Security Force is found in 39 U.S.C. 401, 403(b)(3), and in title VI of the Treasury, Postal Service, and General Government Appropriations Act, 1988, P.L. 100-202, and earlier annual appropriations Acts. Section 609 of P.L. 100-202 provides that the Postal Service Fund shall be available

> for employment of guards for all buildings and areas owned or occupied by ... the Postal Service, and under the charge and control of the ... Postal Service, and such guards shall have, with respect to such property, the powers of special policemen provided by ... 40 U.S.C. 318 ... and, as to property owned or occupied by the Postal Service, the Postmaster General may take the same actions as the Administrator of General Services may take under the provisions of ... 40 U.S.C. 318a, 318b ....

Postal police officers are "special policemen" under 40 U.S.C. 318. They enforce laws enacted for the protection of persons and property, prevent breaches of the peace, and suppress affrays and unlawful assemblies. They are empowered to enforce building rules and regulations published in 39 CFR 232 and, while on duty, to arrest for postal offenses committed on postal property.

The arrest authority of postal police officers is limited to postal property while officially employed. The investigation of postal crimes generally is a duty of a Postal Inspector, and our instructions require a postal police officer to immediately notify a Postal Inspector if a postal police officer makes an arrest or finds evidence of a postal crime.

Families of postal police officers who are killed in the performance of official duties are entitled to the law enforcement death benefits provided in Public Law 98-473. The Postal Service actively sought their inclusion in this legislation for humanitarian reasons, and entitlement to death benefits has no bearing on the strict standards required for law enforcement retirement.

Also, the Postal Service has maintained that postal police officers must conform to a higher standard of personal conduct than the average postal employee. This standard is imposed because postal police officers wear a recognizable uniform and must maintain the necessary respect from other postal employees to properly perform their duties.

Postal police officers are not given a sensitive clearance and do not have access to sensitive matters within the Inspection Service, nor do they have access to investigative files. Because the Security Force is represented by a union, postal police officers work a scheduled tour with scheduled days off and overtime compensation for additional hours worked. Thus, postal police officers do not work irregular hours and generally work at a fixed location. The nature of their position is perimeter and building security, not a position which requires investigation and apprehension of criminal violators.

Postal police officers are authorized to carry a firearm while officially employed, and because of this authority and responsibility, officers must receive training and demonstrate proficiency with their firearm twice a year. The carriage of a firearm is an important element in determining their salary rate. If a postal police officer fails to demonstrate the required level of proficiency, the officer will be reassigned to a position within the Postal Service for which the officer is qualified.

In summary, our postal Security Force is very similar to the Federal Protective Service employed by the General Services Administration and is used by the Postal Service in the same way Federal Protective Service officers are used by the General Services Administration. Federal Protective Service officers do not currently receive retirement benefits as law enforcement officers under 5 U.S.C. 8336(c)(1), and the current definition of "law enforcement officer" in 5 U.S.C. 8331(20) and 5 CFR 831.903 would not include an employee with the duties of a postal police officer.

Sincerely,

Fred Eggleston
Assistant General Counsel
Legislative Division

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STATEMENT OF

THE FEDERAL MANAGERS ASSOCIATION

Introduction

The Federal Managers Association supports H.R. 2532, a bill which expands the coverage of hazardous duty positions in the Federal government whose incumbents would become eligible for early retirement. Introduced by Representative Al Swift of Washington, the bill would add revenue officers, immigration inspectors, and customs inspectors to the list of positions whose hazardous nature qualifies them for deserving special retirement treatment.

Our support for H.R. 2532 is derived from the incontrovertible fact that:

* The revenue officer, immigration inspector, and custom inspector positions in the Federal government are becoming increasingly dangerous and more stressful.

* At the same time, the Federal government is experiencing growing difficulty in recruiting and retaining qualified and committed individuals in these positions.

* Moreover, a younger, more vigorous body of revenue officers, immigration inspectors, and custom inspectors would advance and improve the Internal Revenue Service, Immigration and Naturalization Service, and Customs Service in the pursuit of their important missions.

Under current Federal law, an employee who is separated from the service after reaching age 50 and completing 20 years of service as a law enforcement officer and/or firefighter is entitled to an annuity. As introduced, H.R. 2532 would extend the same requirements for early retirement benefits to other revenue officers, immigration inspectors, and customs inspectors in recognition of the hazardous nature.

Because the membership of the Federal Managers Association includes a significant number of revenue officers of the Internal Revenue Service, we will confine our comments to the beneficial impact H.R. 2532 would have upon the IRS revenue officer workforce.

The Revenue Officer: A Hazardous Position of Trust

Revenue officers of the Internal Revenue Service are responsible for collecting delinquent taxes, securing delinquent tax returns, counseling taxpayers on their tax filing and paying obligations, conducting tax investigations, and participating in special tax compliance programs.

Cases are referred to revenue officers for attention after considerable administrative processing has occurred, including written notices and telephone calls to the underlying delinquent taxpayer, as well as the identification of assets. If by that time the taxpayer has not paid, the revenue officer is called upon.

The majority of the American public pays its taxes voluntarily. Of the remainder who do not, the IRS has estimated that half pay their taxes after the first or second notice. Those who remain in noncompliance constitute that body of persons with whom revenue officers must deal. Because these persons are frequently uncooperative and evasive, as well as financially and psychologically troubled, revenue officers are subject to a range of

personal risks and hazards, including bodily harm and even loss of life..

The Hazards of Danger and Stress for Revenue Officers

In statistical terms, the revenue officer position is the most hazardous position in the Department of the Treasury. During a recent three-year period, the frequency of assaults, threats of assaults and harassment of revenue officers increased by 233 percent. Over the past three years, at least two revenue officers tragically lost their lives to gunshot wounds.

The potential for being threatened, assaulted, or caught unawares is ever present for the revenue officer. The revenue officer is subject to potential physical danger each time he or she makes a field call. The work environment compounds the level of risk and discomfort. Revenue officers may often be called upon to make field calls in unsavory areas or situations, such as in bars, tenement buildings, and high crime areas.

As a result, revenue officers experience a significantly high level of stress. This condition is particularly acute for older revenue officers. An IRS-commissioned study in 1984 found that age and tenure negatively impact upon a revenue officer's ability to deal with the pressures and demands of the job. The study, conducted by Bronston T. Mayes, Associate Professor at the University of California at Fullerton, concluded that older, longer tenured, revenue officers cannot cope as well with

the environmental stress of the job, as compared to younger officers. Similarly, the study showed that job satisfaction among revenue officers bore a direct relationship to years on-the-job.

This declining capacity for and satisfaction with the job may well owe itself to the very nature of the threats of death, injury and property destruction brought upon revenue officers and their families. A threat that is not carried out immediately does not fade away. It remains a danger for months and years to come.

The anecdotal experience of members of the Federal Managers Association, representing managers and supervisors of revenue officers, confirms the results of Mayes' study. Job performance of revenue officers, we believe, begins to seriously decline by the time many revenue officers reach the 20-year mark in their careers. Declining job performance means inefficient and lost productivity for the Government, causing less revenue to be captured for each wage dollar expended. It also means increased supervisory costs, necessitated by the taking of performance-improvement actions and, if necessary, adverse personnel actions against poor performing officers.

It is not surprising, therefore, that the IRS has identified revenue officers as possessing the highest turnover rate among IRS field occupations. Revenue officers exceed revenue agents and special agents in workforce attrition.

H.R. 2532 and Its Beneficial Impact

We are gratified and encouraged by H.R. 2532's recognition of the IRS revenue officer position as a hazardous duty position for the purposes of early retirement. Passage of H.R. 2532 would achieve several significant and noteworthy benefits for the IRS as it concerns revenue officers.

* It would decrease IRS payroll costs for approximately 1,600 revenue officers, according to IRS estimates, who would become eligible for immediate retirement.

* It would ease recruitment and retention problems for IRS revenue officers. The attraction of early retirement benefits would improve revenue officer hiring and reduce current turnover costs.

* It would increase IRS productivity, providing for greater capacity by a younger, more vigorous workforce of revenue officers to capture a larger amount of tax dollars.

For these reasons, along with the similar benefits the legislation would provide to the INS and Customs Service and similarly-situated inspectors, we encourage the Subcommittee to favorably act upon and report out H.R. 2532.

ALAN C. NELSON
COMMISSIONER
IMMIGRATION AND NATURALIZATION SERVICE

This statement is to provide the views of the Immigration and Naturalization Service (INS) on H.R. 2532, a bill to include inspectors of the Immigration and Naturalization Service, inspectors of the United States Customs Service, and revenue officers of the Internal Revenue Service within the immediate retirement provisions applicable to certain employees engaged in hazardous occupations.

The definition of "law enforcement officer" contained in paragraph (20) of Section 8331 of Title 5, United States Code has worked well over the years and accurately describes positions for which a young and vigorous workforce is necessary in order to accomplish our law enforcement missions. H.R. 2532, however, would suspend the application of this definition by listing three categories of positions as subject to law enforcement officer retirement provisions. We believe that coverage under these retirement provisions should more appropriately be determined by administrative process by reference to whether these positions meet the current statutory criteria in 5 U.S.C. 8331.

The INS has also been asked to describe the duties performed by INS inspectors and the extent to which those duties require a young and vigorous workforce. We have included below a summary of the scope of immigration inspectors' responsibilities.

The duties of immigration inspectors consist primarily of the examination of individuals who are seeking entry into the United States and their documents. This examination may also involve the investigation, apprehension, and detention of those

individuals suspected or convicted of offenses against the criminal laws of the United States. In this vein, inspectors have search and detention authority which can be utilized in the questioning of applicants for admission in order to determine whether grounds for excludability exist.

Inspections emphasize the importance of fraudulent document interdiction as an element in the effort to bar entry of terrorists and illegal drugs. The Inspections Division has continuously increased the number of apprehensions. In 1987, for example, 777,006 inadmissible applicants were detected, compared to approximately 584,770 in 1985. These numbers equate to a detection rate of 1.9 per 1,000 inspected in FY 1985 and 2.3 per 1,000 in FY 1987.

The use of fraudulent documents to enter the United States is not limited to those individuals seeking a new life; it has become a method of entry relied upon by terrorist, subversive, and criminal groups throughout the world. As terrorist acts have increased in recent years, the INS has become increasingly aware of the immigration inspector's important role in maintaining the accuracy and integrity of the document inspection program. Heightened scrutiny by immigration inspectors has resulted in a dramatic increase in the recognition and interception of fraudulent documents. For example, in FY 84, 1502 passports and/or non-immigrant visas were intercepted because they were either altered, totally counterfeit, or were valid but used by an imposter. That number rose to 17,256 in FY 87. Similarly,

intercepts of fraudulent Mexican Border Crossing Cards (Form I-186) increased from 5,229 in FY 84 to 21,433 in FY 87. In this same period of time, the interception of aliens with altered or counterfeit or otherwise valid Alien Resident Identification Cards not belonging to them, rose from 4,155 to 7,454. These and other fraudulent entry attempts resulted in the interception of a total of 46,143 felony document counterfeits or violations in FY 87. In addition, 53,832 individuals made felonious claims to United States citizenship and were detected by immigration inspectors in FY 87. Thus, more than ever before, inspectors' duties require them to make a careful preliminary scrutiny of the documents presented by applicants for admission.

On some occasions, various international intelligence and law enforcement organizations, such as Interpol, request inspectors to intercept notorious international criminals. Last year alone, INS inspectors made 10,539 formal "lookout" intercepts of criminal and administrative nature. This year, with the addition into the INS data base of over one and one-half million more lookout records from other agencies, that intercept rate has increased by approximately 30 per cent. In addition, in August 1988, INS inspectors will have FBI NCIC records on line at primary inspection points in a prototype mode at several locations and will be required to determine whether each arriving person is the subject of a warrant in the United States.

Several statutory changes have placed additional enforcement responsibilities on immigration inspectors. In 1979,

section 274 of the Immigration and Nationality Act was amended and added a new dimension to Inspection's enforcement duties. Under this section, any vessel, vehicle, or aircraft used to transport or smuggle inadmissible aliens into the United States may be seized and is subject to forfeiture. Each seizure requires that the perpetrator be detained, usually for no more than a day, while an investigation is conducted and a decision reached whether to pursue prosecution. In FY 1986, INS inspectors seized 4,917 vehicles with an estimated value of $14.6 million.

Enactment on October 21, 1986 of section 206 of the Department of Justice Appropriation Act has resulted in significant changes in INS's detention responsibilities. This law relieved the transportation lines of the task of detaining and maintaining aliens who have been preliminarily identified as excludable. The INS has now become fully responsible for the transportation, detention, and welfare of all aliens who choose to apply for admission before an Immigration Judge or withdraw their applications for admission to the United States. As a result of this statutory change, the INS has assumed many of the duties once performed by the carriers. In the past, the inspector's involvement was limited to the detention of aliens pending transportation by the carrier or the INS, and the removal of aliens across land borders. Since the enactment of section 206, however, the Inspections Division's role in the detention and transportation of aliens has increased, and its duties now

include taking an inadmissible alien into custody and detaining him until he can be returned to his country of origin. In the occasional circumstances where there are no INS detention facilities or when detention officers are unavailable to transport aliens, the inspector assumes that responsibility. Many air and land border ports have detention or holding rooms available to assist in meeting these detention responsibilities.

Immigration inspectors also play an important role in the war on drugs. Through increased training programs and particular diligence on the part of the inspectors, 7,094 drug seizures have been made by immigration inspectors since FY 84, with a total value of $145.2 million. Immigration inspectors are making a concerted effort to intercept alien drug smugglers and traffickers. The success of these efforts is evidenced by the steady annual increase in the number of seizures made by inspectors, amounting to a 220% increase since FY 84.

In the past, some of the more complex criminal law enforcement aspects of the Inspections program were assigned to other INS elements, specifically Criminal Investigations. Although Investigations concentrates on internal violations and not on support of Inspections, the Special Agents of the Investigations unit performed the function of presenting the port of entry violators to the United States Attorney for prosecution. The detection, document investigation, arrest, and substantiation to the United States Attorney of a criminal violation, however, have always been performed by the immigration inspector.

In response to the increasing number of criminal violations at ports of entry and the institution of priority case management by the Investigations Division, the INS established a new position of Senior Inspector at high-risk ports of entry to carry out criminal investigation work. This position was granted law enforcement retirement coverage by the Office of Personnel Management (OPM) in February 1987 under the normal process under the retirement law. Senior Inspectors develop and pursue investigations initiated by primary and secondary inspectors in cases involving criminal violations. In addition, they initiate and pursue the prosecution of criminal offenders, develop and maintain a port of entry intelligence program, and develop appropriate training for all officers at the port. Senior Inspector positions are limited in number and location, however, and are currently assigned only at high risk ports of entry. Journeyman Inspectors perform these duties only on occasion when needed at ports where Senior Inspectors are not located.

Since 1984, highly skilled groups of inspectors known as Fraud Intercept Teams have regularly conducted operations at ports of entry resulting in remarkable increases in the apprehension of fraudulent, mala fide and criminal applicants. When originally conducted in Laredo, Texas; San Ysidro, and Los Angeles, California; Detroit, Michigan; Miami, Florida; and New York, New York; test results revealed that the addition of these well-trained and highly motivated personnel resulted in an increase of 2.5 seconds on primary inspection and 3.5 minutes on

secondary inspection which resulted in a fraud detection rate increase of 32% and a mala fide detection rate increase of 41% over the normal intercept rate. As a result of these operations, many ports have been provided with advanced detection equipment, such as stereo microscopes with fiber optic lighting and 35 mm. and Polaroid camera equipment to record evidence and assist in the dissemination of intelligence data.

Because of their increasing role in enforcement, more than 100 inspectors attended an intensive two-week course entitled "Terrorism, Drugs, and Fraud" (TDF) in 1986. Designed to assist and enhance the inspectors' abilities in this area, training assistance was provided by a variety of federal law enforcement agencies including the FBI, U.S. Customs, Army Intelligence and the Federal Aviation Administration. The TDF course was developed to train officers from ports of entry throughout the country in the most up-to-date information available on drug smuggling, terrorist groups and methods of operation, hostage negotiations, explosives recognition, and advanced fraudulent document detection techniques. These officers then returned to their respective ports of entry to train their peers. Now under Regional Office control, these TDF teams are scheduled to undertake at least four "blitz operations" per year at various air, land, and seaports around the United States. Inspectors have also been invited to attend crime conferences, terrorism seminars, and intelligence meetings.

Law enforcement information systems assist inspectors in the identification of wanted criminals at the time of entry, enabling them to arrest and detain an alien until the interested authorities are contacted. Ports of entry have developed liaison with local law enforcement groups in an effort to work as a team in identifying criminals who may attempt entry into the United States through our borders.

While the immigration inspector does not routinely encounter the threat of violence, the potential hazards of the job must noted. Although such events are relatively infrequent, inspectors have experienced shooting incidents and other assaults, with and without weapons; they are also exposed to other physically hazardous situations, such as at docks and seaports, and while boarding ships by launch or helicopter. While an extraordinary example, the murder of a border inspector on the Northern frontier, as well as much publicized acts of physical violence on the Southern border, further emphasize the potentially hazardous nature of the job of the inspector and support the need for a young and vigorous workforce. In fact, INS has adopted a mandatory firearms policy which, upon implementation, will require inspectors to carry a firearm while on duty, both as protection and as a deterrent against violence and attack by dangerous individuals. In addition, many inspectors have suffered stress, due in part to long hours, mandatory overtime, rotating days off, and other difficult working conditions.

In summary, the duties performed by immigration inspectors involve the inspection of applicants for entry and their documents, in order to ascertain whether they may fall into any of the 33 grounds for exclusion under the Immigration and Nationality Act. In carrying out this primary responsibility, immigration inspectors are involved in the investigation of violations and enforcement of federal law.

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August 30, 1988

Rep. Gary Ackerman, Chairman
House Subcommittee on
Compensation and Employee Benefits
Room 511 HOB Annex 1
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

On behalf of our client, the National Weather Service Employees Organization (NWSEO) we would like to submit these additional comments and attachments relating to the early retirement testimony of Mr. Neal Marchbanks, Chairman, NWSEO's Legislation Committee, before the Subcommittee on July 13, 1988.

At that time, you had asked Mr. Marchbanks to forward a copy of NWSEO's Health and Saftey Committee's report for the record. Enclosed is a copy of their "Health Studies and Shiftwork" report detailing the negative effects on NWS employees of shiftwork and the stress associated with NWS employment. We believe that this NWSEO report documents the need for consideration and passage of congressional legislation designed to provide for early retirement benefits to NWS employees.

The Subcommittee might also be interested to know that NWSEO successfully challenged the federal Government's random drug testing program in court (U.S. District Court for the Northern District of California, John D. Quadros, et al. v. Ronald Reagan, et al., Civil Action No. C-88-1764, July 28, 1988). The Department of Commerce in their legal briefs before the court, made the following admissions on NWS employees which we believe can be used by the Congress to consider early retirement for NWS employees, especially as it relates to the stresses of the job as a result of shift work assignments statements by the federal government included:

- "Through its vast network of facilities, the NWS has a direct, daily influence on the health and safety of all Americans every day of the year. In fulfilling its mission, the DOC must insure that NWS employees pose no risk to people's safety. There can be little argument against maintaining rigorous fitness-for-duty requirements corresponding to these grave responsibilities."

- "The National Weather Service operates approximately 300 local offices across the country. Many of the offices are located at local or regional airports. The majority of these offices are open around the clock 7 days a week. Each local NWS office has a small staff of meteorologists and Met - techs. Met - techs are responsible for formulating official weather observations for airports across the nation. Those observations are required by the FAA to enable commercial airlines to fly safety and are particularly critical to safe takeoff and landings. A Met - tech must exercise careful judgement as to when an observation needs to be amended and transmitted to aviation interests. For example, an airliner that is on final approach is very vulnerable to changing meteorological conditions, such as wind shear. These conditions must be closely monitored by the employee and rapidly documented in the form of an amended observation when, in the judgment of the observer, certain criteria have been met. These employees are also responsible for determining when to issue warnings to the public concerning severe weather, including tornados. Thus, the primary weather observation and severe weather warning functions of NWS are intrusted to these local offices. Their duties include providing pilot weather briefings, issuing severe weather warnings, and supplying severe weather information to state and local disaster and emergency services organizations. Because they generally work alone, these employees must be able to exercise unimpaired judgment."

Mr. Chairman, we appreciate this opportunity to provide these additional comments for your consideration.

Sincerely,

John Chwat

JC/kw

Enclosure

August 29, 1988

Health Studies & Shiftwork

A Report by the Health & Safety Committee of the National Weather Service Employees Organization

Stress, the catch word of the Eighties has always been with the Nation's weathermen. One can imagine the frustration of Isaac M. Cline in September, 1900, peddling his bicycle on the streets of Galveston, Texas trying to warn of an impending hurricane. He was ignored and 5,000 people died, America's worst natural disaster. Only it was worst than Cline thought, it killed his own wife when he was trapped at the office. Today's weathermen at all levels face similar situations in which their actions mean life or death. Technology has altered the communications; the bicycle and pendant flag have been exchanged for the computer and satellite. [1]

National Weather Service workers face a hostile work environment packed with all the recognize stress factors. A sedentary workplace with a job that is simply impossible. No one can predict weather accurately 100% of the time. Deadlines face everyone, from the balloon man fighting undependable equipment to the lead forecaster missing the latest computer models. NWS modernization over the last two decades only added to the problem. Especially well documented were the massive computer difficulties described by the Government Accounting Office Report in November, 1981. Recently Richard Wagoner, the Chief of Operations

Division, Office of Meteorology, National Weather Service, stated under oath that meteorologists faced "catastrophic public safety consequences" if they failed "to perform their responsibilities properly." Of the meteorological technicians Wagoner informed "work methods involved complicated routines or sequences, elaborate equipment or instrumentation, exacting data collection requirements or heavy public service schedules." Since 1980 the NWS and some forecasters personally have been sued for "failure to properly forecast, warn and disseminate weather information" involving a total of 250 deaths, 50 injured and claims of about half a billion dollars. All recipes for stress. [2]

The NWS provides all of nation's aviation forecasts distributed by the Federal Aviation Administration. Stress is equivalent to the FAA employees. The Line Forecasters of the NWS face the comparable responsibilities of the Air Traffic Controllers, while the Met Techs with their warning responsibility, clearly face greater stress than the Flight Service pilot briefer. Aviation is only one facet of a much larger picture for the National Weather Service. Warnings dominate the organizational conscience. To predict aviation hazards, you have be aware of all the weather: tornadoes, hurricanes, severe thunderstorms, blizzards, floods, heat waves and even volcanic dust. Not only do weather men face criticism in constant internal

verification schemes but any member of the disgruntled public or news media may complain about any forecast. [3]

Just as the FAA, NOAA employees work rotating shifts and are subject to a variety of health effects. The three year study conducted on NWS forecasters by D.I. Tepas from the Sleep Laboratory of the Illinois Institute of Technology found respondents still got fewer hours of sleep, used naps, had sleep difficulties, had the same frequency of health problems and the same perceived suitability of shiftwork. Tepas concluded it is "difficult to maintain the hypothesis that workers adapt to rotating shiftwork." [4]

It has only been a century since Thomas Edison's electric light greatly expanded night work. However increased accident rates at night have been noted since the dawn of the industrial revolution by American and European scientists. The human body is genetically programed to be what biologists call a "diurnal" animal, asleep at night and awake during the day. We have an extremely complex physiology to accomplish the process, called the circadian rhythm. When these rhythms are opposed, numerous problems develop. The most glaring example is the natural fatigue period between 3:00 A.M. and 6:00 A.M. when alertness and motor skills fall to low ebb; resulting in automatic

behavior, if one can stay awake at all. This is caused by our internal clock and it is quite difficult to defeat. So it should be no surprise that more accidents occur at night. Even though many of the causes are now known, there are few cures. For example, truckers still have more single vehicle accidents at night than any other comparable time period. It is no coincidence that the major industrial accidents, Three-Mile Island, Bhopal, and Chernobyl all occurred on the midnight shift. [5]

Except for the NESIDS employees, the 24 hour electronic technicians, who deal with high voltages, weathermen are fortunately not exposed dangerous machinery. For them a multitude of health effects await instead. Over the last two decades the new science of chronobiology has developed to study changes in the circadian rhythms. In the last few years over 20,000 studies have been published describing hormonal, endocrinal, body temperature and hundreds of other cyclic chemical changes in the animal kingdom. So new is the science that the exact location of our own tiny .3 mm internal "clock" was in debate into the mid 1980's. Known by a dozen different names in the last 100 years the superachiasmatic nuclei cells near the hypothalamus in the brain, control most, but not 100% of the circadian process. The pineal gland and the eye's retina and probably the skin with its Vitamin D manufacturing capability complete the process. [6]

Weathermen's problems start because night time activity causes many of the hundreds of body cycles to start working out of sequence. This is called "desynchronization" or "phase shifting." The most common example is jet lag. For example, these studies show psychomotor performance, body temperature, and adrenocortical hormones are "rather slow" to adjust while urinary nonadrenalin and reaction time adjust at "relatively rapid" rates. One of the most studied hormonal rhythms in mammals is the serum corticosteroid rhythm. Patty's tells us, "In diurally active human, the serum corticosteroids, such as cortisol, begin to be sercreted from the cortex of the adrenal gland during sleep and usually reach a peak just after the daytime activity begins. It is noteworthy that this temporal pattern and most other rhythms persist even if one remains awake through the 24 h(ou)rs; moreover, the occurrence of this rhythm, but not all rhythms, is independent of meal timing." A fourfold or greater variation is seen in 24 hours clearly shows that this is not just a minor fluctuation. Other examples of high amplitude circadian rhythms include cell proliferation, airway resistance in asthmatics and venous lymphocytes. Lower amplitude rhythms appear in heart rate, body temperature, eye-hand coordination, mood and vigor. Disrupting these rhythms

clearly causes a group of symptoms as upset stomach, insomnia and fatigue. By 1980 it became axiomic to classify shift workers as suffering from constant or chronic "jet lag." [7]

The problem does not manifest itself uniformly in the population. Approximately 20% simply cannot tolerate shift work in any form and quickly find other work. At the other end, night owls which make up less than 10% of the population, seem to adopt more easily to shift work. One of the reasons is the body temperature cycle. In morning people the body temperature rises quickly to full efficiency after waking while night owl's temperature is slow to respond. The amplitude of the change is also important with night owls having a larger variation. That leaves the other 70% that can tolerate shiftwork but only at the expense of their overall well being. Except for increased family demands, menstrual disturbances and leg cramps, there are no apparent differences between women and men; shiftwork bothers all. [8]

One of the biggest problems is that shiftworkers get less sleep than day workers. This can cause chronic sleep deprivation. The landmark study was reported by Richard M. Coleman in his book Wide Awake at 3:00 A.M. "In 1959, the American Cancer Society surveyed a representative sample of over one million Americans in the San Francisco Bay Area to

determine the health and lifestyle habits most predictive of longevity and illness. Six years later the respondents were recontacted and mortality rates were assessed. Surprisingly, one of the best guides for predicting which respondents would be alive at the six year follow-up period was how long they slept. In some age\groups males with a history of 4 hours of sleep per day were ten times more likely to have died than those who slept between 7.0 and 7.9 hours. Nor was sleeping too much a good idea: Mortality rates were twice as great for those sleeping 10 or more hours. Even the groups who slept 8.0 to 8.9 hours or 6.0 to 6.9 hours had a greater mortality than those who slept between 7.0 and 7.9 hours....(F)requent use of sleeping pills was associated with higher death rates." Coleman also tells us that insomnia is believed to be a problem for 15 to 30 percent of the adult population but can soar to "closer to 65 percent" for shiftworkers. While depression is often a cause for insomnia, it can be stress induced, the weathermen's problem. Tepas found 67% of the NWS forecasters reported sleep difficulties. [9]

The developments of chronobiology are recorded in several major monographs published since the early 1970s; they serve in establishing the major principles of the science.

The Public Health Service in 1971 published Biological Rhythms in Psychiatry & Medicine by Gay Gaer Luce. Chapter 11, "Work-Rest Schedules and Isolation," describes the development of "free running" circadian rhythm concepts from cave studies that deprived subjects of time clues. A basic discussion follows about Zeitgebers; the German term for "time giver". Many things help coordinate the circadian rhythm and they are known individually or collectively as "Zeitgebers". Light, Exercise, Social Activity and Electric Fields were discussed. Luce found the first study of increased ulcers in shiftworkers was published in 1957. [10]

The 1960s cave studies isolated subjects from the usual environmental time clues and proved most people have a free-running cycle slightly longer than the standard earth day, averaging 24.8 hours. This causes the traditional Monday through Friday day workers to stay up later during the weekend and resultant backward setting of the internal clock produces the "Monday Morning Blahs," our cultural jet lag. This normally represents a two or three hour phase shift while weatherman have to adjust to eight hour changes; similar to flying from Washington, D.C. to Moscow, Russia, weekly. Considerable variation exist in the circadian period ranging from 23.5 hours to over 27 hours. Interestingly, the most unstable personalities, such as manic depressives seem to have the shortest

rhythms. Night owls average closer to 24.0 hours. For most people the natural 24.8 hour life is reset each day upon awakening and through social intercourse. [11]

For rodents the primary Zeitgeber is sunlight. While light of the proper intensity is important in maintaining phase relationships in the human work environment, a much stronger factor is the social activity. In larger Weather Service Forecast Offices fellow workers help keep one another awake but many smaller offices only have one man on duty at night. He must fight his rhythms by himself. One will also try to match the schedule of family and friends. No matter what shift is worked, weathermen almost always revert to the day/night schedule of the household on days off. This generally results in a larger desynchronization of rhythms when shiftwork is resumed. [12]

In 1980 NASA published a study that reviewed much of the work of the done in the 1970s. By this time the term "chronobiologist" was in free usage. Also accepted is the comparison of shiftworkers with jet lag. The major difference is travelers have "acute phase alteration" and the shiftworkers "experiences repeated, chronic phase alterations." The symptoms were "very similar." [13]

In 1982 Martin C. Moore-Ede, Frank M. Sulzman and

Charles A. Fuller wrote The Clocks That Time Us. It is a comprehensive and highly technical book adding much more to the history of the field. (Incidentally noting the first study of shiftworker stomach problems date back to the World War I armaments industry.) The Zeitgeber discussion is expanded and a summary of over a hundred different body rhythms is presented. Also of much value is the chapter on "Medical Implications of Circadian Rhythmicity," describing known effects and pointing out areas of research which may prove beneficial, particularly in the timing of chemotheraphy. [14]

Another useful work, Biological Rhythms, Shiftwork, and Occupational Health, appeared in Patty's Industrial Hygiene & Toxicology in 1985. After reviewing 5,000 papers and attending several international conferences, Dr. Smolensky, et al, conclude there is general agreement of a higher incidence of gastrointestional disease among shiftworkers. This includes both duodenal and peptic ulcers, dyspepsia, constipation, gastritis and appetite disturbances. Needless to say that both ulcers and heart burn are aided by stressful job conditions. In addition, rotating shiftwork can "exacerbate" a number of predisposed medical conditions such as, diabetes mellitis, epilespy, and certain respiratory, cadiovascular and renal disorders. They also came up with a still controversial suggestion that a sudden intolerance to shiftwork can develop in long

time workers. While it can occur at any age the phenomenon is most common between the ages of 40 and 50 years. The body rhythms "free run." It is manifested by the "onset of exacerbation of the typical shiftwork-associated medical complaints. Sleep alterations such as shortened duration, frequent awakenings, and insomnia are commonly reported. Persisting fatigue, not always the result of these sleep difficulties, is another. The intolerant worker often complains of tireness immediately after awakening, during weekends away from work, and during vacations. This type of persisting fatigue is different from the physiological fatigue resulting from physical and/or mental effort on the job since the latter nearly always dissipates after an adequate night's rest. Intolerant shiftworkers may also exhibit changed behavior. This can be manifest as an increase in irritability and excitability with malaise and lowered performance. Digestive complaints such as dyspepsia, epigastric pain, and peptic ulcer are common difficulties of the intolerant shiftworker." Sudden Intolerance To Shiftwork is not a recognized medical syndrome; others in the field dismiss it simple aging. Whatever the eventual out come of this discussion it does point out that shiftwork becomes more difficult with age. [15]

For a long time many scientists would not agree that

shiftworkers suffer a greater risk of heat attacks. Early 1980s Swedish studies of papermill workers and policemen suggest higher rates of heart attacks among shift workers beginning after five years on the job peaking at triple the normal rate after 15 years then declining. The millworkers smoked and were exposed to chemicals; the policemen worked a horrible schedule, so these studies have not widespread acceptance in the USA, but they do illustrate problems with shiftworking humans under stressful conditions. In 1985 a long study by a group of Harvard Medical School researchers on the circadian timing of heart attacks found an out of phase group of morning episodes that was suggested to be caused by individuals with circadian rhythms problems i.e. shiftworkers. The researchers clearly felt that shiftworkers were at "higher risk of having heart attacks." This study convinced many, prompting the April, 1987, Mayo Clinic Health Letter to clearly state "Recent studies show that people who work rotation shifts over long periods of time are at increased risk for coronary artery heart disease as well as stomach and duodenal (peptic) ulcers. They also commonly suffer chronic insomnia, as do people who work a constant night shift." [16]]

There is another body of socially oriented studies, considered "soft" by epidemiological medical standards, which suggests up to a 40% higher divorce rate overall for shiftworkers. Patty's monograph explains, "From a

sociological perspective, both the standard rotating and, to a lesser extent, unusual work schedules have been shown to affect the worker's family and community life. This is not surprising because the nature of rotating shiftwork schedules requires the time patterns of recreation and socializing undergo reorganization weekly, sometimes even more often. Commonly, when shiftworkers are a home, their friends and family may be at work, school or asleep. Another frequent shortcoming is that shiftworkers may have only one full weekend per month during which they are not at work. As a result, shiftworkers and their family members are frequently disappointed with the quantity and quality of time that they spend together. Years of research have shown that shiftwork is likely to affect the well-being and health of employees." Also: "Moreover, in families in which one spouse is a rotation shiftworkers and the other a dayworker, great strain is placed on the marriage. Communication between husband and wife, as well as children, becomes restricted or curtailed. In addition, the shiftworking parent finds it difficult or impossible to attend important school and/or other functions. In certain situations, children become resentful toward the shiftworking parent. Spouses also can become disenchanted; they may feel alone and neglected and marital discord may result." Other studies indicate more family life conflicts, a less extensive social life and fewer friends.

Another listed shiftwork complaints as "lowered frustration tolerance, slight nervousness, increased implulsive-aggressive tendencies, anxiety, depression, and apathy." No matter how you look at it, for many people, shiftwork is harmful. [17]

The science of Chronobiology is young, it will eventually revolutionize many medical prescription regimes, enhancing treatment. In the process it has discovered that shiftwork can cause health problems which are greatly magnified by high stress work situations like those encountered by NOAA weathermen and technicians.

D.J. Kava
Chairman

FOOTNOTES

[1] A Weekend in September, John Edward Weems, Henry Holt & Company, 1957

[2] Problems Plague National Weather Service ADP System, Government Accounting Office report CED-82-6, November 18, 1981. Declaration of Richard Wagoner in John D. Quadros, et al., v Ronald R. Reagan, et al., 7/28/88, US District Court for the Northern District of California, C 88 1764 RHS; and Exhibits A and D.

[3] Transcript of Proceedings, US District Court for the Northern District of California, Deposition of Elbert W. Friday, Jr., Quadros, et al., v Reagan, et al., 6/21/88.

[4] Abstract, "A Three-year Follow-up Survey of the Sleep and Health of Experienced Rotation Shift Workers", D. I. Tepas, et al; Sleep Laboratory, Department of Psychology, Illinois Institute of Technology, Chicago, IL. Paper presented at The XXI International Congress on Occupational Health, September 9-14, 1984, Dublin

[5] Wide Awake at 3:00 A.M., By choice or by Chance?, Richard M. Coleman, 1986, W. H. Freeman and Company, New York. Page 61. Graph, Circadian Technology Inc. conference, Human Performance & Health in Round-The-Clock Operations, January 19th, 1988, New Orleans, Louisiana. Coleman (1986) page 31.

[6] Circadian Technology Conference discussion. The Clocks That Time Us, Martin Moore-Ede, Frank Sulzman, Charles Fuller, Harvard University Press, 1982, page 168. "The Rhythms of Life," Associated Press, Malcolm Ritter, The Dallas Morning News, Discoveries, January 7, 1985. Science News quoting Science 2/14/86 & Science News 11/9/85 page 298.

[7] Patty's Industrial Hygiene & Toxicology, 2nd Edition, Volume 3B: Biological Responses, Chapter 5; Biological Rhythms, Shiftwork, and Occupational Health, M.H. Smolensky, Ph.D, D.J. Paustenbach, Ph.D, L.E. Scheving, Ph.D., 1985, pages 208-214. Also Moore-Ede (1982) pages 247-251. Preliminary Draft of Effects of Circadian Rhythm Phase Alteration on Physiological and Psychological Variables: Implications to Pilot Performance, An Annotated Bibliography, Preliminary Draft, July 15, 1980. Funded by a grant from NASA, Ames Research Center (NCA2-OR675-005) to Dr. Daniel C. Holley and group at San Jose State University.

[8] Associated Press story, Houston Chronicle, 6/3/84 quoting Donald I. Tepas, Director of a sleep laboratory at the Illinois Institute of Technology in Chicago; Coleman (1986) pages 181-4, 61.

[9] Coleman (1986) page 97; 133. Tepas (1984) figure 2.

[10] Biological Rhythms in Psychiatry & Medicine, by Gay Gaer Luce; published by U. S. Department of Health, Education, and Welfare, Public Health Service (Alcohol, Drug Abuse, and Mental Health Administration; Division of Scientific Information; National Institute of Health) circa 1971, pages 133-144; 177-180.

[11] Luce (1971) page 134. Smolensky (1985) page 280.

[12] Luce (1971) pages 141-2; 133-6.

[13] Effects of Circadian Rhythm Phase Alteration on Physiological and Psychological Variables: Implications to Pilot Performance, An Annotated Bibliography, Preliminary Draft, July 15, 1980. Funded by a grant from NASA, Ames Research Center (NCA2-OR675-005) to Dr. Daniel C. Holley and group at San Jose State University. Also of interest is the discussion debunking the popular Biorhythm fad of the 1970's and cited some small studies suggesting benefits with "electrosleep," biofeedback, acupuncture, sleep inducing drugs all which required additional study but could only suggest "meditation" and Hatha Yoga for the current worker.

[14] The Clocks That Time Us, Martin Moore-Ede, Frank Sulzman, Charles Fuller, Harvard University Press, 1982

[15] Biological Responses, Patty's Industrial Hygiene & Toxicology, 2nd Edition, Volume 3B: Chapter 5; "Biological Rhythms, Shiftwork, and Occupational Health," M.H. Smolensky, Ph.D, D.J. Paustenbach, Ph.D, L.E. Scheving, Ph.D., 1985; pages 191-2; pages 274-5. Discussion Circadian Technology Inc. conference, Human Performance & Health in Round-The-Clock Operations, January 19th, 1988, New Orleans, Louisiana.

[16] Smolensky (1985); Medical Implications of Shift-Work, Martin C. Moore-Ede, Ph.D. and Gary S. Richardson, M.D. American Review of Medicine, 1985, 36:607-17, Pages 607-617. Circadian Variation in the Frequency of Onset of Acute Myocarial Infarction, James E. Muller and Others, New England Journal of Medicine, 11/21/85, pages 1315-1322. UPI release 11/21/85 Alpena (MI) News.

[17] Associated Press story, Houston Chronicle, 6/3/84 quoting Donald I. Tepas, Director of a sleep laboratory at the Illinois Institute of Technology in Chicago. Smolensky (1985) page 179 and 192. The Effects of Shift Work on the Lives of Employees, Peter Finn, Monthly Labor review, October, 1981. Personnel Journal, June, 1984, "Shift Workers," Gerald A. Benjamin, pages 73-76.